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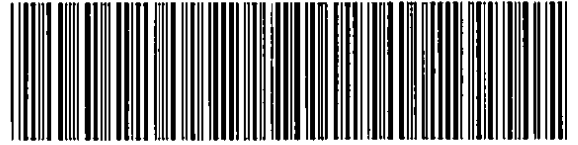
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*Merger*  
*03/29/19*

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TALLAHASSEE, FL



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March 28, 2019

Ms. Lyn Shoffstall  
Department of State  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, Florida 32399

VIA OVERNIGHT COURIER

**Re: Articles of Merger with respect to the merger of:  
FC Merger Subsidiary V, Inc., with and into Biscayne Bancshares, Inc. (Step 1);  
Biscayne Bancshares, Inc. with and into First-Citizens Bank & Trust Company  
(Step 2);  
and Biscayne Bank with and into First-Citizens Bank & Trust Company (Step 3)**

Dear Ms. Shoffstall:

As described in my recent electronic mail message and discussed in our previous telephone conversations, please find enclosed for filing an executed original and two copies of the Articles of Merger with respect to the three related merger transactions captioned above, which are to become effective sequentially on the dates and at the times prescribed in the respective articles of merger for each such transaction, as outlined above.

Due to the crucial nature of the timing of these transactions in relation to each other, the parties also respectfully request that, in the absence of any subsequent contrary instructions, the enclosed articles also be filed in the order shown above before the close of business on Monday, April 1.

Please accept this letter as authorization to charge the amount of the applicable filing fees, the return of one certified copy of each of the enclosed articles of merger and any other costs to Shutts & Bowen's pre-paid account with the Division of Corporations. The firm's account number is: 120030000004.

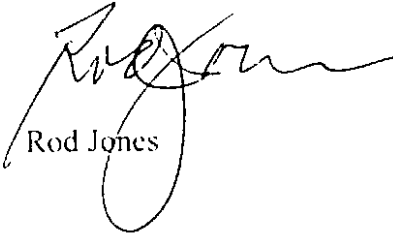
It would also be very helpful and much appreciated if you could return by electronic means a file-stamped copy of the articles of merger (without the associated plans of merger) for each of the three transactions as promptly as possible after filing has been completed so that confirmation of the filing can be provided contemporaneously to counsel for each of the parties.

Ms. Lyn Shoffstall  
March 28, 2019  
Page 2

Thank you for your assistance in this regard. Should you have questions concerning any aspect of the foregoing or the enclosures, please do not hesitate to call me.

Sincerely,

Shutts & Bowen LLP



Rod Jones

cc: E. Knox Proctor, Esq.  
William R. Latham, Esq.  
Bowman Brown, Esq.

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**ARTICLES OF MERGER  
OF  
FC MERGER SUBSIDIARY V, INC.  
WITH AND INTO  
BISCAYNE BANCSHARES, INC.**

**FILED**  
**2019 MAR 29 PM 3:32**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FL**

Pursuant to the provisions of the Florida Business Corporation Act (the "Act"), Biscayne Bancshares, Inc. and FC Merger Subsidiary V, Inc. do hereby adopt the following Articles of Merger for the purpose of merging FC Merger Subsidiary V, Inc. with and into Biscayne Bancshares, Inc.

**FIRST:** The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Biscayne Bancshares, Inc., a Florida corporation, and FC Merger Subsidiary V, Inc., a North Carolina corporation. The surviving corporation in the Merger is Biscayne Bancshares, Inc., which shall continue to conduct its business following effectiveness of the Merger under the name "Biscayne Bancshares, Inc."

**SECOND:** The Plan of Merger is set forth in the Agreement and Plan of Merger dated as of November 15, 2018, by and among First-Citizens Bank & Trust Company, FC Merger Subsidiary V, Inc., Biscayne Bank, and Biscayne Bancshares, Inc. (the "Plan of Merger"). A copy of the Plan of Merger is attached hereto as Exhibit A and made a part hereof by reference as if fully set forth herein.

**THIRD:** The Merger shall become effective at 11:59 p.m., Eastern Time, on April 1, 2019.

**FOURTH:** The Plan of Merger was adopted by the shareholders of Biscayne Bancshares, Inc. on January 17, 2019. There were no dissenting shareholders of Biscayne Bancshares, Inc. The Plan of Merger was adopted by the sole shareholder of FC Merger Subsidiary V, Inc. on November 13, 2018.

**FIFTH:** The Plan of Merger was approved by Biscayne Bancshares, Inc., in accordance with the applicable provisions of the Act. The Plan of Merger was approved by FC Merger Subsidiary V, Inc. in accordance with the applicable laws of the State of North Carolina.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of March 29, 2019.

**BISCAYNE BANGSHARES, INC.**

By: \_\_\_\_\_

Thomas D. Lumpkin, II  
Chairman of the Board

**FC MERGER SUBSIDIARY V, INC.**

By: \_\_\_\_\_

Craig L. Nix  
President

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of March 29, 2019.

**BISCAYNE BANCSHARES, INC.**

By: \_\_\_\_\_  
Thomas D. Lumpkin, II  
Chairman of the Board

**FC MERGER SUBSIDIARY V, INC.**

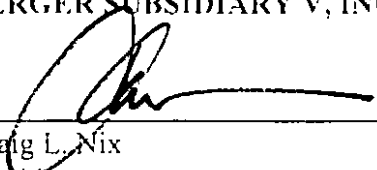
By: \_\_\_\_\_  
  
Craig L. Nix  
President

EXHIBIT A

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**BISCAYNE BANCSHARES, INC.,**

**BISCAYNE BANK,**

**FIRST-CITIZENS BANK & TRUST COMPANY**

**AND**

**FC MERGER SUBSIDIARY V, INC.**

EFFECTIVE AS OF NOVEMBER 15, 2018

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## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (the "Agreement") is made and entered into as of the 15th day of November, 2018, by and among **BISCAYNE BANCSHARES, INC.** ("BBI"), **BISCAYNE BANK** ("Biscayne"), **FIRST-CITIZENS BANK & TRUST COMPANY** ("Buyer"), and **FC MERGER SUBSIDIARY V, INC.** ("Merger Sub").

**WHEREAS**, BBI is a Florida business corporation with its principal office and place of business located in Coconut Grove, Florida, and is a bank holding company registered as such with the Board of Governors of the Federal Reserve System; and

**WHEREAS**, Biscayne is an insured, Florida-chartered bank with its principal office and place of business located in Coconut Grove, Florida, and is a wholly-owned bank subsidiary of BBI; and

**WHEREAS**, Buyer is an insured, North Carolina-chartered bank with its principal office and place of business located in Raleigh, North Carolina; and

**WHEREAS**, Merger Sub is a North Carolina business corporation with its principal office and place of business located in Raleigh, North Carolina, and is a wholly-owned transitory subsidiary of Buyer, newly formed solely for purposes of facilitating the transactions described in this Agreement; and

**WHEREAS**, BBI and Buyer have agreed that it is in their mutual best interests and in the best interests of their respective shareholders for BBI and Biscayne to be acquired by Buyer in the manner and upon the terms and conditions contained in this Agreement and, for that purpose, BBI, Biscayne, Buyer and Merger Sub have agreed to enter into this Agreement, effective as of the date first above written; and

**WHEREAS**, Biscayne has agreed to join as a party to this Agreement for the purpose of agreeing to its undertakings and agreements provided herein in order to induce Buyer to enter into this Agreement; and

**WHEREAS**, as a condition and inducement to Buyer's willingness to enter into this Agreement, each of the directors and executive officers of BBI and Biscayne have, concurrently with the execution of this Agreement, entered into and delivered to Buyer a Support Agreement in the form attached as Appendix A to this Agreement pursuant to which he or she has agreed to the undertakings and covenants contained therein; and

**WHEREAS**, this Agreement has been approved by or for BBI's, Biscayne's, Buyer's and Merger Sub's respective Boards of Directors and, except as otherwise permitted hereunder, BBI's Board will recommend approval of this Agreement to BBI's shareholders.

**NOW, THEREFORE**, in consideration of the premises, the mutual benefits to be derived from this Agreement, and the representations, warranties, conditions, covenants and promises herein contained, and subject to the terms and conditions hereof, BBI, Biscayne, Merger Sub and Buyer adopt and make this Agreement and mutually agree as provided below.

## ARTICLE I—DEFINITIONS

Certain of the capitalized terms used throughout this Agreement are listed below with their meanings as used herein.

**1.01. Acquisition Agreement.** The term "Acquisition Agreement" shall have the meaning assigned to it in Paragraph 5.02(l) of this Agreement.

**1.02. Acquisition Proposal.** The term "Acquisition Proposal" shall have the meaning assigned to it in Paragraph 5.02(l) of this Agreement.

**1.03. Aggregate Merger Consideration.** The term "Aggregate Merger Consideration" shall have the meaning assigned to it in Paragraph 2.04(a) of this Agreement.

**1.04. Agreement.** The term "Agreement" shall have the meaning assigned to it in the recitals herein.

**1.05. Annual Report.** The term "Annual Report" shall have the meaning assigned to it in Paragraph 3.27(b) of this Agreement.

**1.06. Anti-Money Laundering Laws.** The term "Anti-Money Laundering Laws" shall have the meaning assigned to it in Paragraph 3.32 of this Agreement.

**1.07. Assets.** The term "Assets" with respect to any Person means all of the assets, properties, deposits and businesses of such Person of every kind, nature, character and description.

**1.08. BancShares.** The term "BancShares" refers to Buyer's parent bank holding company, First Citizens BancShares, Inc.

**1.09. Bank Merger.** The term "Bank Merger" shall have the meaning assigned to it in Paragraph 2.08 of this Agreement.

**1.10. Bank Secrecy Act.** The term "Bank Secrecy Act" means the Bank Secrecy Act of 1970, as amended, and its implementing regulations.

**1.11. BBI.** The term "BBI" shall have the meaning assigned to it in the recitals of this Agreement.

**1.12. BBI Audited Financial Statements.** The term "BBI Audited Financial Statements" means BBI's audited consolidated balance sheets as of December 31, 2017 and 2016, and its audited consolidated statements of income, comprehensive income, changes in stockholders' equity and cash flows for each of the years ended December 31, 2017 and 2016, together with the notes thereto.

**1.13. BBI Certificates.** The term "BBI Certificates" shall have the meaning assigned to it in Paragraph 2.04(g)(iii) of this Agreement.

**1.14. BBI Common Stock.** The term "BBI Common Stock" shall refer to BBI's common stock, par value \$0.01 per share.

**1.15. BBI Companies; BBI Company.** The term "BBI Companies" refers collectively to BBI, Biscayne, Icy Beans, Inc. and Vizcaya Controls, LLC, and any other entity that as of the date of this Agreement is, or at any time subsequent to the date of this Agreement and prior to the

Effective Time becomes, a subsidiary of BBI or Biscayne. The term "BBI Company" refers individually to any entity that is one of the BBI Companies.

**1.16. BBI Interim Financial Statements.** The term "BBI Interim Financial Statements" means BBI's unaudited consolidated balance sheet as of September 30, 2018, and its unaudited consolidated profit and loss statement for the nine-month period ended September 30, 2018.

**1.17. BBI Material Change.** The term "BBI Material Change" means the occurrence or discovery of any fact, event, change, condition, development, circumstance or effect with respect to any of the BBI Companies that, individually or in combination with any other such facts, events, changes, conditions, developments, circumstances or effects, represents, has resulted or would be reasonably likely to result (whether before or after the Merger), in a material adverse change in: (a) the condition, financial or otherwise, Assets, Liabilities, or businesses of the BBI Companies considered as one entity, including BBI's consolidated financial condition, shareholders' equity or results of operations, or in the business, Assets or operations of the BBI Companies (including, without limitation, any such change resulting from any new, or the acceleration of, any existing Liability or from the BBI Companies' failure to comply with Laws applicable to them), or in the ability of the BBI Companies considered as one entity to carry on their businesses as and at the locations at which they are conducted on the date of this Agreement, (b) the business or operations of Buyer or Buyer's ability to continue the BBI Companies' businesses as and at the locations at which they are conducted on the date of this Agreement, or (c) the ability of BBI, Biscayne or Buyer to obtain any Required Regulatory Approval or to consummate the transactions described in or contemplated by this Agreement in accordance with their terms and conditions. However, such term shall not include any change (or the direct and indirect effects of any change) resulting from the impact of (i) changes after the date hereof in (A) Laws or interpretations thereof (other than court decisions related to Litigation in which any of the BBI Companies is a party), (B) GAAP or regulatory accounting requirements, (C) global or national political conditions, including the outbreak or escalation of war, whether or not declared, hostilities or acts of terrorism, or (D) general economic or market conditions, including changes in interest rates, (ii) earthquakes, hurricanes, tornadoes or other natural disasters (and, in the case of (i) and (ii), that affect the banking industry as a whole and do not affect the BBI Companies in a disproportionate manner as compared to other community banks in Florida); (iii) the direct effects of the negotiation of, entering into, public announcement of and compliance with this Agreement and consummation of the transactions contemplated hereby (including normal costs and expenses) on the consolidated operating results of the BBI Companies, or (iv) any actions taken by any BBI Company at the request or instruction, or with the written permission, of Buyer after the date hereof and prior to the Effective Time that relate to, or affect, the business of any BBI Company.

**1.18. BBI Stock Plan.** The term "BBI Stock Plan" means the Biscayne Baneshares, Inc. 2011 Long-Term Incentive Plan.

**1.19. BBI Real Property.** The term "BBI Real Property" means (a) any real property, including improvements thereon, owned (including foreclosed properties), leased, or operated by a BBI Company or in which a BBI Company holds any other interest other than a security interest securing a Loan (including an interest in a fiduciary capacity), and (b) any facility or property in which a BBI Company participates in the management of the facility or property.

**1.20. BBI Reports.** The term "BBI Reports" shall have the meaning assigned to it in Paragraph 3.09(a) of this Agreement.

**1.21. BBI Restricted Stock Grants.** The term "BBI Restricted Stock Grant" means any and all grants of restricted shares of BBI Common Stock (whether or not vested) that have been granted pursuant to the BBI Stock Plan.

**1.22. BBI Stock.** The term "BBI Stock" means shares of any and all classes or series of common stock (including the BBI Common Stock), preferred stock or any other equity securities issued or that may be issued by BBI.

**1.23. BBI Shareholders' Meeting.** The term "BBI Shareholders' Meeting" shall have the meaning assigned to it in Paragraph 5.01(a) of this Agreement.

**1.24. BBI Stock Option.** The term "BBI Stock Option" means any and all options to purchase shares of BBI Stock (whether or not vested) that have been granted pursuant to the BBI Stock Plan or pursuant to any other agreement, plan or arrangement.

**1.25. BBI 401(k) Plan.** The term "BBI 401(k) Plan" means the Biscayne Bank 401(k) Plan.

**1.26. Biscayne.** The term "Biscayne" shall have the meaning assigned to it in the recitals of this Agreement.

**1.27. Biscayne Common Stock.** The term "Biscayne Stock" means Biscayne's common stock, \$5.00 par value per share.

**1.28. Biscayne Stock.** The term "Biscayne Stock" means shares of any and all classes or series of common stock (including the Biscayne Common Stock), preferred stock or any other equity securities issued or that may be issued by Biscayne.

**1.29. BSA/AML Assessment.** The term "BSA/AML Assessment" shall have the meaning assigned to it in Paragraph 5.01(i) of this Agreement.

**1.30. Business Day.** The term "Business Day" means any day other than a Saturday, a Sunday or a day on which state-chartered banking institutions in North Carolina are authorized or obligated by Law or executive order to be closed.

**1.31. Buyer.** The term "Buyer" shall have the meaning assigned to it in the recitals of this Agreement.

**1.32. Buyer Benefit Plans.** The term "Buyer Benefit Plans" shall have the meaning assigned to it in Paragraph 7.06(b) of this Agreement.

**1.33. CFTR Act.** The term "CFTR Act" means the Currency and Foreign Transaction Reporting Act of 1970, as amended, and its implementing regulations.

**1.34. Closing and Closing Date.** The terms "Closing" and "Closing Date" shall have the meanings assigned to them in Paragraph 2.06 of this Agreement.

**1.35. COBRA.** The term "COBRA" shall have the meaning assigned to it in Paragraph 3.27(a) of this Agreement.

**1.36. Code.** The term "Code" means the Internal Revenue Code of 1986, as amended.

**1.37. Commercially Reasonable Efforts.** The term "Commercially Reasonable Efforts" means a party's best efforts in good faith; *provided*, that Commercially Reasonable Efforts shall not require (a) the expenditure of sums of money or other resources that are unreasonable under the



circumstances or in relation to the significance to the transactions described in this Agreement of the action or result the party is required to use Commercially Reasonable Efforts to take or achieve, or (b) the initiation of a lawsuit against any Person.

**1.38. Confidential Information.** The term “Confidential Information” shall have the meaning assigned to it in Paragraph 7.04(a) of this Agreement.

**1.39. Continuing Employee.** The term “Continuing Employee” shall have the meaning assigned to it in Paragraph 7.06(a) of this Agreement.

**1.40. CRA.** The term “CRA” shall have the meaning assigned to it in Paragraph 3.33 of this Agreement.

**1.41. Disclosure Schedule.** The term “Disclosure Schedule” means a letter or memorandum delivered by BBI and Biscayne to Buyer, or by Buyer to BBI and Biscayne, specifically referring to this Agreement and setting forth, among other things, information being Previously Disclosed by the delivering party to the receiving party, the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this Agreement or as an exception to one or more representations, warranties or covenants contained herein; *provided*, that (i) with the exception of disclosures expressly required by this Agreement, no such information is required to be set forth in a party’s Disclosure Schedule as an exception to a representation or warranty if its absence would not be reasonably likely to result in the related representation or warranty being deemed untrue or incorrect, (ii) the mere inclusion of information in a party’s Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission by that party that such information represents a material exception or fact, event or circumstance or, in the case of BBI’s Disclosure Schedule, that such item is reasonably likely to result in a BBI Material Change.

**1.42. Dissenters’ Rights.** The term “Dissenters’ Rights” means the right of BBI’s shareholders under, and subject to the conditions of, Section 607.1301, *et al.*, of the Florida Statutes to demand payment of the fair value of their shares of BBI Stock.

**1.43. DOL.** The term “DOL” shall have the meaning assigned to it in Paragraph 3.27(b)(iii) of this Agreement.

**1.44. Effective Time.** The term “Effective Time” means the date and time at which the Merger shall become effective as specified in the Articles of Merger filed with the Florida Division of Financial Institutions and the North Carolina Secretary of State, respectively, as described in Paragraph 2.06 below and in accordance with applicable Law in order to effect the Merger.

**1.45. Employment Contracts.** The term “Employment Contracts” shall have the meaning assigned to it in Paragraph 3.27(b)(i) of this Agreement.

**1.46. Environmental Laws.** The term “Environmental Laws” shall have the meaning assigned to it in Paragraph 3.23(a)(i) of this Agreement.

**1.47. ERISA.** The term “ERISA” shall have the meaning assigned to it in Paragraph 3.27(a) of this Agreement.

**1.48. GAAP.** The term “GAAP” means accounting principles generally accepted in the United States; *provided*, that where GAAP conflicts with regulatory accounting principles applicable to

BBI or Biscayne, the regulatory accounting principles will govern and the term GAAP will be read to include such principles.

**1.49. Hazardous Material.** The term "Hazardous Material" shall have the meaning assigned to it in Paragraph 3.23(a)(ii) of this Agreement.

**1.50. HIPAA.** The term "HIPAA" shall have the meaning assigned to it in Paragraph 3.27(a) of this Agreement.

**1.51. HPI.** The term "HPI" shall have the meaning assigned to it in Paragraph 3.22 of this Agreement.

**1.52. Indemnitees.** The term "Indemnitees" shall have the meaning assigned to it in Paragraph 10.01(c) of this Agreement.

**1.53. Indemnitor.** The term "Indemnitor" shall have the meaning assigned to it in Paragraph 10.01(c) of this Agreement.

**1.54. Informing Party.** The term "Informing Party" shall have the meaning assigned to it in Paragraph 7.04(a) of this Agreement.

**1.55. Intellectual Property.** The term "Intellectual Property" refers to copyrights, patents, trademarks, service marks, service names, trade names, brand names, internet domain names, social media accounts, logos together with all goodwill associated therewith, registrations and applications therefor (including U.S. Registration Numbers 3186853 (design mark) and 4337385 (word mark) and Florida Registration Numbers T06000000156 (design mark) and T06000000157 (word mark) for BISCAYNE BANK), technology rights and licenses, computer software (including any source or object codes therefor or documentation relating thereto), trade secrets, franchises, inventions, and other intellectual property rights.

**1.56. Knowledge of BBI.** The term "Knowledge of BBI" refers to facts, information, events or circumstances of which any of Thomas D. Lumpkin, II, Lorie Z. Yarchin, Ana L. Dominguez, Jean-Marie Florestal or Arlene J. Velazqueoni is consciously aware or of which they or any of them, after reasonable investigation, should have become consciously aware in the Ordinary Course and the performance of their management duties.

**1.57. Knowledge of Buyer.** The term "Knowledge of Buyer" refers to facts, information, events or circumstances of which its Chief Executive Officer or Chief Financial Officer is consciously aware or of which any of them, after reasonable investigation, should have become consciously aware in the Ordinary Course and the performance of their management duties.

**1.58. Law.** "The term "Law" refers to any code, statute, law (including common law), ordinance, rule, regulation, guidance, or reporting or licensing requirement having the force of law, applicable to a Person or to its business, Assets or Liabilities, including those promulgated, interpreted or enforced by any Regulatory Authority and including court decisions and other interpretations thereof, as such Law currently exists and is interpreted, or as it may be amended, supplemented or interpreted after the date hereof.

**1.59. Lease Agreement.** The term "Lease Agreement" shall have the meaning assigned to it in Paragraph 3.17(a) this Agreement.

**1.60. Liability.** The term "Liability" means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks, and drafts presented to Biscayne or Buyer, respectively, for collection or deposit in the Ordinary Course) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

**1.61. Lien.** The term "Lien" means any (a) mortgage, lien, pledge, charge, security interest, lease, license, conditional sale agreement or other title retention agreement, (b) any option, rights of way or easement, (c) any title imperfection, defect, exception or irregularity, or (d) any other encumbrances of any kind.

**1.62. Litigation.** The term "Litigation" means any action, arbitration, cause of action, lawsuit, enforcement action, claim, dispute, complaint, controversy, criminal prosecution, governmental or other examination or investigation, audit (other than regular audits of financial statements by outside auditors), compliance review, inspection, hearing, arbitration, administrative or other proceeding relating to or affecting a party or its business, records, policies, practices, actions, compliance with Law, Assets (including contracts related to it), or the Merger or other transactions described in this Agreement, but shall not include regular, periodic examinations of depository institutions and their affiliates by Regulatory Authorities.

**1.63. Loan Collateral.** The term "Loan Collateral" shall have the meaning assigned to it in Paragraph 3.18(b) of this Agreement.

**1.64. Loan Loss Reserve.** The term "Loan Loss Reserve" shall have the meaning assigned to it in Paragraph 3.18(g) of this Agreement.

**1.65. Loans.** The term "Loans" means any and all (a) loans (whether held for investment or for resale) reflected as Assets on the books and records of any of the BBI Companies, (b) Sold Loans previously sold by any of the BBI Companies to any third party which have been repurchased by any of the BBI Companies, (c) lines of credit, letters of credit, accounts, notes, financing leases and other extensions of credit or receivables reflected as Assets on the books and records of any of the BBI Companies, (d) all unfunded commitments to make a loan or issue or extend credit by any of the BBI Companies, and (e) interests or participations in any of the foregoing held by any of the BBI Companies in loans made by other Persons.

**1.66. Losses.** The term "Losses" means any and all demands, claims, actions or causes of action (including those by Regulatory Authorities), judgments, fines, fees, penalties, assessments, amounts paid in settlement, losses, damages, Liabilities, costs, and expenses, including interest, penalties, cost of investigation and defense, and reasonable attorneys' and other professional fees and expenses.

**1.67. Material Contract.** The term "Material Contract" means:

(a) any employment, change of control, bonus, severance, termination, consulting, indemnification, deferred compensation or retirement or supplemental retirement agreement, contract, plan or other compensatory arrangement (in each case with respect to which a BBI Company has continuing obligations as of the date of this Agreement) with any current or former (i) officer or employee of a BBI Company, (ii) member of the board of directors of a BBI Company, or (iii) consultant to any BBI Company.

(b) any contract providing for indemnification by a BBI Company of any Person, other than contracts included in (a) above and other contracts entered into in the Ordinary Course;

(c) any contract that materially restricts the conduct of any business of a BBI Company or limits the freedom of a BBI Company to engage in any line of business in any geographic area or that requires exclusive referrals of business or requires a BBI Company to offer specified products or services to its customers or depositors on a priority or exclusive basis;

(d) any contract that involves the disposition or acquisition of real property by a BBI Company without regard to amount, or the disposition or acquisition of any other Assets by a BBI Company with a purchase price or fair market value of \$200,000 or more, other than dispositions and acquisitions of investment securities and Loans in the Ordinary Course;

(e) any contract that grants any Person a right of first refusal, right of first offer or similar right with respect to any material Assets, rights, or businesses of a BBI Company;

(f) any alliance, cooperation, joint venture, partnership or similar contract involving a sharing of profits or losses relating to a BBI Company;

(g) any trust indenture, mortgage, promissory note, loan agreement, bond, security agreement, pledge agreement or other contract or instrument for the borrowing of money or that creates a Lien on any Assets of a BBI Company, or any currency exchange or commodities arrangement, in each case, where a BBI Company is a lender or creditor, borrower, obligor or obligee, guarantor, mortgagor or mortgagee, pledgor or pledgee, or other party, other than agreements evidencing or related to Loans, agreements evidencing deposit Liabilities, trade payables, Federal funds transactions, and borrowings by Biscayne from the Federal Home Loan Bank of Atlanta entered into in the Ordinary Course;

(h) any hedging, interest rate exchange or swap arrangement, or options, futures or similar trading arrangement, to which a BBI Company is a party;

(i) any collective bargaining agreement or similar employment contract to which a BBI Company is a party;

(j) any lease for real or personal property in which a BBI Company is a lessee or lessor;

(k) any contract to which a BBI Company is a party involving Intellectual Property (other than click wrap licenses, shrink wrap licenses or other similar licenses for commercial off-the-shelf software);

(l) any contract relating to the provision of material data processing, network communication, or similar technical services to or by a BBI Company;

(m) any contract relating to the provision of any other services to a BBI Company and for which it is obligated to make payments in excess of \$50,000 in the aggregate over the remaining term of the contract, provided the contract is not terminable by that BBI Company before the Effective Time, or Buyer after the Effective Time, on no more than 30 days' notice;

(n) any contract relating to a purchase, sale, issuance, transfer or redemption of any BBI stock of a BBI Company;

(o) any contract between a BBI Company and any current director, officer or principal shareholder of a BBI Company or an affiliate of any such person, other than Loans and contracts for banking services entered into in the Ordinary Course;

(p) any other contract, agreement or arrangement under which a BBI Company is obligated to make payments or incur costs, or has any Liability, in excess of \$50,000 in the aggregate over its remaining term and that is not otherwise described in clauses (a) through (o) above; and

(q) any other contract that is not described in clauses (a) through (p) above that is material to the business of the BBI Companies, taken as a whole.

**1.68. Merger.** The term "Merger" shall have the meaning assigned to it in Paragraph 2.01 of this Agreement.

**1.69. Merger Sub.** The term "Merger Sub" shall have the meaning assigned to it in the recitals of this Agreement.

**1.70. OFAC.** The term "OFAC" means the United States Department of the Treasury's Office of Foreign Asset Control.

**1.71. Option Payment.** The term "Option Payment" shall have the meaning assigned to it in Paragraph 2.04(f) of this Agreement.

**1.72. Orders.** The term "Orders" shall have the meaning assigned to it in Paragraph 3.16(c) of this Agreement.

**1.73. Ordinary Course.** The term "Ordinary Course" means, with respect to the BBI Companies, or with respect to Buyer, the conduct of the business of BBI and Biscayne, or of Buyer, respectively, in substantially the same manner as such business was operated and conducted on the date of this Agreement and in conformance and consistent with their or its policies, practices and procedures prior to and as of such date.

**1.74. Parcel.** The term "Parcel" means a discrete piece of BBI Real Property as described in Paragraph 1.19 of this Agreement.

**1.75. Patriot Act.** The term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and the regulations promulgated thereunder.

**1.76. Paying Agent.** The term "Paying Agent" shall have the meaning assigned to it in Paragraph 2.04(g)(i) of this Agreement.

**1.77. Permits.** The term "Permits" shall have the meaning assigned to it in Paragraph 3.16(b) of this Agreement.

**1.78. Permitted Investments.** The term "Permitted Investments" shall have the meaning assigned to it in Paragraph 2.04(g)(ii) of this Agreement.

**1.79. Permitted Liens.** The term "Permitted Liens" means (a) statutory Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, provided a reserve is established

therefor as required by GAAP, (b) mechanics', carriers', workers', warehousemen's, repairers' and similar Liens arising or incurred in the Ordinary Course with respect to Liabilities that are not yet delinquent, or (c) easements, rights of way, and other similar encumbrances, in either case that do not materially restrict or affect the use of the BBI Real Property or Assets of the BBI Companies subject thereto or affected thereby for the purposes for which it or they currently are used or otherwise materially impair business operations at such properties, or materially adversely affect the economic value or marketability of the BBI Real Property or Assets.

**1.80. Per Share Merger Consideration.** The term "Per Share Merger Consideration" shall have the meaning assigned to it in Paragraph 2.04(a) of this Agreement.

**1.81. Person.** The term "Person" means any natural person or any legal, commercial or governmental entity, including any corporation, general or limited partnership, limited liability company, limited liability partnership, joint venture, association, trust, unincorporated organization, or other entity (including its permitted successors and assigns and any Person acting in a representative capacity), and any group of natural persons and/or entities acting in concert or which otherwise is deemed to be a "person" for purposes of Section 13(d) of the 1934 Act and the SEC's rules promulgated thereunder.

**1.82. Plans.** The term "Plans" shall have the meaning assigned to it in Paragraph 3.27(b)(ii) of this Agreement.

**1.83. Policies.** The term "Policies" shall have the meaning assigned to it in Paragraph 3.28 of this Agreement.

**1.84. Previously Disclosed.** The term "Previously Disclosed" shall mean the disclosure of information by BBI and Biscayne to Buyer, or by Buyer to BBI and Biscayne, respectively, in, or in the case of lists of specified information or copies of documents being Previously Disclosed, as Appendices to, a Disclosure Schedule delivered by the disclosing party to the receiving party at least three Business Days prior to the execution and delivery of this Agreement. Information shall be deemed to have been Previously Disclosed in the disclosing party's Disclosure Schedule for the purpose of a given Paragraph, Subparagraph or item of this Agreement only if (a) the information is provided in a numbered Paragraph of the Disclosure Schedule corresponding to the relevant numbered Paragraph, Subparagraph or item in this Agreement to which it applies, or (b) in the case of information that applies to more than one Paragraph, Subparagraph or item of this Agreement, if such information is provided in the disclosing party's Disclosure Schedule once with respect to one such Paragraph, Subparagraph or item and that disclosure specifically references or cross-references to each other Paragraph, Subparagraph or item to which the information applies.

**1.85. Proxy Statement.** The term "Proxy Statement" shall have the meaning assigned to it in Paragraph 5.01(b) of this Agreement.

**1.86. Receiving Party.** The term "Receiving Party" shall have the meaning assigned to it in Paragraph 7.04(a) of this Agreement.

**1.87. Regulatory Authorities.** The term "Regulatory Authorities" includes each and every federal, state or local governmental, regulatory (banking or otherwise), or judicial authority having jurisdiction over any of the BBI Companies, Buyer, Buyer's parent holding company, or any of their respective business operations or Assets, or the Merger or other transactions described herein, or to which any of them are required to file reports, including without limitation the North Carolina Commissioner of Banks, the Division of Banking of the Florida Office of Financial Regulation, the Federal Deposit

Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of Richmond, the Federal Reserve Bank of Atlanta, United States Department of Justice, and the SEC.

**1.88. Regulatory Directive.** The term "Regulatory Directive" shall have the meaning assigned to it in Paragraph 3.16(c) of this Agreement.

**1.89. Release.** The term "Release" shall have the meaning assigned to it in Paragraph 3.23(a)(iii) of this Agreement.

**1.90. Required Regulatory Approvals.** The term "Required Regulatory Approvals" means all approvals of Regulatory Authorities that are required by Law to be obtained by BBI, Biscayne or Buyer in order to consummate the Merger and other transactions described in or contemplated by this Agreement (including the Subsequent Transactions), or necessary and appropriate waivers by Regulatory Authorities of their approval or registration requirements.

**1.91. Retirement Plans.** The term "Retirement Plans" shall have the meaning assigned to it in Paragraph 3.27(d) of this Agreement.

**1.92. SEC.** The term "SEC" means the Securities and Exchange Commission.

**1.93. Section 409A.** The term "Section 409A" shall have the meaning assigned to it in Paragraph 3.27(l) of this Agreement.

**1.94. Sold Loans.** The term "Sold Loans" means (a) any and all loans or extensions of credit of any nature made by any of the BBI Companies which have been sold to any investor or other purchaser, and (b) any and all interests or participations in loans or extensions of credit of any nature made by any of the BBI Companies which have been sold to any investor or other purchaser.

**1.95. Subsequent Transactions.** The term "Subsequent Transactions" shall refer collectively to the Subsidiary Merger and the Bank Merger.

**1.96. Subsidiary Merger.** The term "Subsidiary Merger" shall have the meaning assigned to it in Paragraph 2.08 of this Agreement.

**1.97. Superior Proposal.** The term "Superior Proposal" shall have the meaning assigned to it in Paragraph 9.02(b)(v) of this Agreement.

**1.98. Tax and Taxes.** The terms "Tax" and "Taxes" shall have the meanings assigned to them in Paragraph 3.12(a) of this Agreement.

**1.99. Tax Returns.** The term "Tax Returns" shall have the meaning assigned to it in Paragraph 3.12(a) of this Agreement.

**1.100. Third Party Claim.** The term "Third Party Claim" shall have the meaning assigned to it in Paragraph 10.01(c) of this Agreement.

**1.101. Treasury Regulations.** The term "Treasury Regulations" shall have the meaning assigned to it in Paragraph 3.12(a) of this Agreement.

**1.102. 1934 Act.** The term "1934 Act" means the Securities Exchange Act of 1934, as amended.

## ARTICLE II—THE MERGER

**2.01. Nature of Transaction.** Subject to the terms and conditions of this Agreement, at the Effective Time Merger Sub will be merged with and into BBI pursuant to and in accordance with the provisions of Section 607.1107 of the Florida Statutes, and Chapter 55 of the North Carolina General Statutes (the "Merger").

**2.02. Effect of Merger; Surviving Corporation.** At the Effective Time, and by reason of the Merger, and subject to the provisions of Paragraph 2.08 below, the separate corporate existence of Merger Sub shall cease, while BBI, as the surviving entity in the Merger, will become the wholly-owned subsidiary of Buyer and shall continue to exist as a Florida corporation and as the parent holding company of Biscayne.

**2.03. Assets and Liabilities of Merging Companies.** At the Effective Time, and by reason of the Merger, and in accordance with applicable Law, all of the Assets and rights of every kind and character of Merger Sub (including all real, personal or mixed property, all debts due on whatever account, all other choses in action and every other interest of or belonging to or due to Merger Sub, whether tangible or intangible) shall be transferred to and vest in BBI, and BBI shall succeed to all the rights, privileges, immunities, powers, purposes and franchises of a public or private nature of Merger Sub, all without any conveyance, assignment or further act or deed; and, BBI shall become responsible for all of the Liabilities of every kind, nature and description of Merger Sub as of the Effective Time. As the surviving entity in the Merger, all of BBI's Assets and rights of every kind and character, and its privileges, immunities, powers, purposes and franchises of a public or private nature, shall remain with BBI, and BBI shall remain responsible for all of its Liabilities of every kind, nature and description as of the Effective Time.

### **2.04. Conversion and Exchange of Stock**

(a) *Conversion of BBI Common Stock.* Except as otherwise provided in this Agreement, at the Effective Time all outstanding shares of BBI Common Stock, and all rights associated therewith, shall cease to be outstanding and, as consideration for and to effect the Merger, and in the manner and subject to the limitations described in this Agreement, each such outstanding share (which shall not exceed in the aggregate the 4,627,107 shares of BBI Common Stock outstanding on the date of this Agreement), *plus* such additional number of shares of BBI Common Stock as may be issued by BBI following the date of this Agreement as permitted by Paragraph 5.02(c) below, and all rights associated therewith, without any action by BBI, Buyer or any holder of those shares, shall be exchanged for and converted into the right to receive cash in the amount of \$25.05 per share of BBI Common Stock, subject to adjustment as provided in Paragraph 2.04(i) (the "Per Share Merger Consideration"). The total of the Per Share Merger Consideration payable to BBI Shareholders is hereinafter referred to as the "Aggregate Merger Consideration."

At the Effective Time, and without any action by Buyer, BBI or any BBI shareholder, all outstanding shares of BBI Common Stock shall be cancelled, BBI's stock transfer books shall be closed, and there shall be no further transfers of BBI Common Stock on its stock transfer books or the registration of any transfer of BBI Common Stock by any holder thereof, and the holders of BBI Common Stock shall cease to be, and shall have no further rights as, shareholders of BBI other than as provided in this Agreement or by applicable Law. Following the Effective Time, BBI Common Stock shall evidence only the right of the registered holders thereof to receive the Per Share Merger Consideration as provided above; *provided*, that any holders of BBI Common Stock who properly exercise and do not later waive their Dissenters' Rights shall receive cash as described in



Paragraph 2.04(j) below rather than the Per Share Merger Consideration described in this Paragraph 2.04(a).

(b) ***Exchange and Conversion of Merger Sub Capital Stock.*** At the Effective Time, and by reason of the Merger, each share of stock of Merger Sub outstanding immediately prior to the Effective Time shall cease to be outstanding and shall be exchanged for and converted into one newly issued share of BBI Common Stock.

(c) ***Buyer Capital Stock.*** Each share of capital stock of Buyer outstanding immediately prior to the Effective Time will continue to be an identical outstanding share of Buyer's capital stock immediately after the Effective Time. No shares of capital stock of Buyer or BancShares, and no shares, securities or obligations convertible into the capital stock of Buyer or BancShares, will be issued or delivered to any shareholder of BBI or otherwise under this Agreement.

(d) ***Biscayne Stock.*** Following the Effective Time, all outstanding shares of Biscayne Stock held by BBI shall continue to be held by BBI, and Biscayne shall remain the wholly owned subsidiary of BBI, subject to the provisions of Paragraph 2.08 below.

(e) ***BBI Stock Held by BBI or Buyer.*** Notwithstanding anything contained in this Agreement to the contrary, if at the Effective Time any shares of BBI Stock are held by BBI or Buyer, in each case other than in a fiduciary capacity or as a result of debts previously contracted, those shares shall be canceled at the Effective Time and no consideration shall be issued in exchange therefor.

(f) ***BBI Stock Options and BBI Restricted Stock Grants.***

(i) At the Effective Time, each BBI Stock Option, whether vested or unvested, that is outstanding immediately prior to the Effective Time shall cease to represent a right to acquire shares of BBI Common Stock and shall be converted automatically into the right to receive a cash payment from Buyer in an amount equal to (i) the Per Share Merger Consideration, less the exercise price per share of such BBI Stock Option, multiplied by (ii) the number of shares of BBI Common Stock covered by that BBI Stock Option, and (iii) less the amount of any required Tax withholding (the "Option Payment"). Prior to and as a condition of his or her receipt of the Option Payment, and before the Effective Time, each holder of a BBI Stock Option shall execute a cancellation agreement, in a form reasonably acceptable to Buyer and BBI. At the Effective Time, Buyer shall deliver checks for the Option Payments to the holders of BBI Stock Options. Nothing herein shall prevent any holder from exercising, before the Effective Time, any BBI Stock Option that is exercisable according to its terms and any BBI Common Stock issued upon such exercise shall be converted at the Effective Time into the right to receive the Per Share Merger Consideration, subject to the exercise of Dissenters' Rights.

(ii) At the Effective Time, each BBI Restricted Stock Grant that is outstanding and remains unvested immediately prior to the Effective Time shall become fully vested in accordance with its terms.

(g) ***Exchange and Payment Procedures; Surrender of Certificates***

(i) No later than 35 days prior to the Effective Time, Buyer shall designate a bank or other service provider reasonably satisfactory to Buyer and BBI to act as paying agent for Buyer and the holders of the BBI Common Stock in connection with the Merger (the "Paying Agent").

(ii) At or prior to the Closing, Buyer shall deposit the Aggregate Merger Consideration with the Paying Agent. The Aggregate Merger Consideration shall be held by the Paying Agent for Buyer and the holders of BBI Common Stock and shall not be used for any purposes other than to make payments to such holders of amounts to which they become entitled pursuant to this Paragraph 2.04; *provided*, that, pending disbursement of the Aggregate Merger Consideration to BBI's shareholders, Buyer may direct the Paying Agent to invest such cash as is a part of the Aggregate Merger Consideration in obligations of or guaranteed by the United States of America, in commercial paper obligations receiving the highest rating from Standard & Poor's Corporation, in money market funds which are invested solely as provided above, in certificates of deposit of or other deposit accounts in domestic commercial banks (including Buyer, and provided that such accounts are designated by the depository banks as containing funds held by the Paying Agent for the benefit of Buyer and the holders of BBI Common Stock), or in such other investments as to which Buyer and the Paying Agent shall agree (collectively, the "Permitted Investments"), any of which Permitted Investments shall have a maturity that will not prevent or delay payments to be made pursuant to this Paragraph 2.04. All interest, dividends or other income on the invested funds shall belong solely to Buyer or, at Buyer's sole discretion, the Paying Agent. If for any reason (including losses on invested funds) the funds held by the Paying Agent are inadequate to pay the amounts to which the holders of BBI Common Stock shall be entitled under this Paragraph 2.04, Buyer shall be liable for the payment of any deficiency.

(iii) On the Business Day following the Effective Time, BBI shall deliver, or shall cause its stock transfer agent to deliver, to the Paying Agent a certified listing of record holders of BBI Common Stock, in such electronic format, and including such information, as the Paying Agent shall reasonably request, including the numbers of shares held of record by those holders, their addresses, their taxpayer identification numbers, and a record of shareholder certification of taxpayer identification numbers. During the two weeks prior to the anticipated Effective Time, BBI will cooperate with the Paying Agent, including by providing test files, to ensure that the above certified listing, when delivered, will include such information, and be in such electronic form and format, as is reasonably requested by the Paying Agent in order for it and the exchange of shares for cash to be entered in and processed on the Paying Agent's system. Within ten (10) days following the Paying Agent's receipt of the above certified listing in the form and containing the information it reasonably requests, Buyer shall cause the Paying Agent to mail to each record holder as of the Effective Time, whose shares of BBI Common Stock were converted pursuant to Paragraph 2.04(a) above, at such record holder's address listed on the above certified listing, a transmittal letter (in such form and having such provisions as Buyer and the Paying Agent may reasonably specify, and as shall be provided by Buyer to BBI prior to issuance), together with instructions for effecting the surrender of BBI Common Stock in exchange for the Per Share Merger Consideration to which that record holder shall be entitled as of the Effective Time.

Upon a record holder's submission to the Paying Agent of a transmittal letter duly executed and completed in accordance with the instructions thereto, and surrender to the Paying Agent of all certificates representing the holder's BBI Common Stock ("BBI Certificates"), together with such additional documents, information or certifications as Buyer or the Paying Agent shall reasonably request, and verification of the status and ownership of the record holder's shares by the Paying Agent, the Paying Agent shall promptly mail a check or, if agreed to by the Paying Agent, upon a record holder's request and payment of the Paying Agent's standard fee, make an electronic transfer, to that record holder in exchange for his, her or its BBI Common Stock in the aggregate amount of Per Share Merger Consideration into and for which

the record holder's BBI Common Stock has been converted and exchanged, without any interest thereon.

Delivery of BBI Certificates shall not be considered to have been effected, and the risk of loss of a BBI Certificate shall not be considered to have passed to Buyer or the Paying Agent, until the BBI Certificates shall have been actually delivered to the Paying Agent, with a properly completed transmittal letter, together with such additional documents, information or certifications as Buyer or the Paying Agent shall reasonably require, in accordance with the instructions provided by the Paying Agent as provided above.

In making payments of aggregate amounts of Per Share Merger Consideration to each record holder of BBI Common Stock, fractions of one cent shall be rounded to the nearest whole cent.

Each BBI shareholder shall be responsible for all Taxes as shall be imposed on any income that shareholder is deemed to recognize in connection with the conversion of his, her or its BBI Common Stock. If Buyer or the Paying Agent shall determine to its reasonable satisfaction that it is required to pay, or withhold, the whole or any part of any Tax in connection with its payment of Per Share Merger Consideration to a shareholder, then Buyer and the Paying Agent shall have the full power and authority to withhold and pay such Tax from its payment to that shareholder.

(iv) At any time following the one-year anniversary of the Effective Time, Buyer shall be entitled to require the Paying Agent to deliver to it any portion of the Aggregate Merger Consideration (including any interest received with respect thereto) previously deposited by Buyer with, but which has not been disbursed by, the Paying Agent, and, thereafter, any BBI record holders who have not yet surrendered their BBI Certificates shall be entitled to look to Buyer only as a general creditor thereof with respect to the Per Share Merger Consideration into which their BBI Common Stock has been converted. Upon any such BBI shareholder's later surrender of his, her or its BBI Certificates to Buyer or the Paying Agent, with a properly completed transmittal letter, in accordance with the instructions provided by Buyer, Buyer shall promptly deliver to that BBI record holder, in exchange for his, her or its BBI Common Stock, a check drawn for the aggregate amount of the Per Share Merger Consideration into and for which his, her or its BBI Common Stock has been converted and exchanged, without any interest thereon; *provided*, that, notwithstanding anything contained in this Agreement to the contrary, neither Buyer nor the Paying Agent shall be liable to any holder of BBI Common Stock for any Per Share Merger Consideration payable to that holder which previously has been delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. In no event shall any BBI record holder receive or be entitled to interest on the Per Share Merger Consideration to which he, she or it is entitled for any period before or after the Effective Time.

(h) **Lost Certificates.** BBI shareholders whose BBI Certificates have been lost, destroyed, stolen or are otherwise missing shall be entitled to receive the Per Share Merger Consideration to which they are entitled in accordance and upon compliance with conditions imposed by Buyer and the Paying Agent pursuant to applicable Law, including the requirement that the shareholders provide an affidavit with respect to the loss, destruction or theft of their BBI Certificates, and an indemnification agreement and surety bond (or other indemnification satisfactory to Buyer and the Paying Agent in their sole discretion) in such sum and on such terms as Buyer and the Paying Agent may direct against any claims made against Buyer or the Paying Agent with respect to shares of BBI Common Stock represented by the BBI Certificates claimed to have been lost, destroyed or stolen.

(i) **Antidilutive Adjustments.** If, prior to the Effective Time, BBI shall declare any dividend payable in shares of BBI Stock or other securities or shall subdivide, split, reclassify or combine the presently outstanding shares of BBI Common Stock, then the Aggregate Merger Consideration shall remain unchanged, but an appropriate and proportionate adjustment shall be made in the Per Share Merger Consideration into which each share of BBI Common Stock will be converted at the Effective Time pursuant to this Agreement.

(j) **Statutory Dissenters' Rights.** Any shareholder of BBI who is entitled to and properly exercises Dissenters' Rights shall be entitled to receive payment of the fair value of his, her or its shares of BBI Common Stock in the manner and pursuant to the procedures provided for in Section 607.1301, *et al.*, of the Florida Statutes. However, if any shareholder of BBI who exercises Dissenters' Rights shall fail to perfect those rights, or effectively shall waive or lose such rights, then each of his, her or its shares of BBI Common Stock shall be deemed to have been converted into the right to receive cash as provided in Paragraph 2.04(a).

**2.05. Articles of Incorporation, Bylaws, Directors and Officers.** The Articles of Incorporation and Bylaws of BBI in effect at the Effective Time shall be the Articles of Incorporation and Bylaws of BBI as the surviving entity in the Merger. Effective at the Effective Time, the then-current officers and directors of BBI shall cease to be officers and directors, and Buyer, as the holder of all outstanding shares of BBI Stock, may appoint new officers and directors of BBI as the surviving entity in the Merger.

**2.06. Closing; Effective Time.** The closing of the Merger (the "Closing") shall take place at the offices of Buyer, or at such other place as Buyer shall designate, on a date specified by Buyer which shall be no later than 30 days following the satisfaction of all conditions precedent to the Merger (other than those conditions that by their nature cannot be satisfied until the Closing) that have not been effectively waived (*provided*, that if the last day of that 30-day period is not the last day of a calendar month, then the Closing shall be on a date no later than the last day of that month), or on such other date as the parties shall mutually agree (the "Closing Date"). At the Closing, Buyer, Merger Sub, BBI and Biscayne each shall take such actions (including the delivery of certain closing documents) as are required in this Agreement and as otherwise shall be required by Law to consummate the Merger and cause it to become effective.

Subject to the terms and conditions set forth in this Agreement, the Effective Time of the Merger shall be the date and time specified in Articles of Merger filed with the Florida Department of State and the North Carolina Secretary of State, each of which shall be in a form provided for by applicable Law and as shall be satisfactory to Buyer and BBI.

**2.07. Restructure of Transaction.** Buyer shall have the right to modify the structure of the Merger in order to achieve tax benefits or for any other reason, including for its internal accounting purposes, which Buyer may deem advisable; *provided*, that Buyer shall not have the right, without the approval of the Board of Directors of BBI and, if and to the extent required by applicable Law, the holders of BBI Stock, to make any modification that (i) would change the amount (other than as described in Paragraph 2.04(i)) or type of Per Share Merger Consideration to which the holders of shares of BBI Common Stock are entitled, or (ii) would delay or jeopardize receipt of any of the Required Regulatory Approvals. Buyer may exercise this right of modification by giving written notice to BBI in the manner provided in Paragraph 11.05 of this Agreement, which notice shall include a form of an amendment to this Agreement or a form of an Amended and Restated Agreement and Plan of Merger which, in either case, shall not be required to be executed by any of the parties, and shall include a certification by the Chief Financial Officer of Buyer that, to his knowledge, such revision complies with the terms and conditions of this Paragraph 2.07.

**2.08. Subsequent Transactions.** Subject to completion of the Merger, and at times to be determined by Buyer at its sole discretion, following the Effective Time BBI shall be merged into Buyer (the "Subsidiary Merger"), and following and subject to completion of the Subsidiary Merger, Biscayne shall be merged into Buyer (the "Bank Merger"), in each case with Buyer as the surviving entity. The Subsidiary Merger shall be effected pursuant to and in accordance with the terms of the Agreement and Plan of Merger attached hereto as Appendix B, and the Bank Merger shall be effected pursuant to and in accordance with the terms of the Agreement and Plan of Merger attached hereto as Appendix C. The Subsidiary Merger and the Bank Merger are collectively referred to herein as the "Subsequent Transactions."

### **ARTICLE III—REPRESENTATIONS AND WARRANTIES OF BBI AND BISCAYNE**

Except as otherwise specifically provided in this Agreement or as Previously Disclosed to Buyer, BBI and Biscayne each hereby make the following representations and warranties to Buyer.

#### **3.01. Organization; Standing; Power.**

(a) BBI is duly organized and incorporated, validly existing and in good standing as a business corporation under the Laws of Florida, and is a bank holding company duly registered as such under the Bank Holding Company Act of 1956, as amended, and applicable sections of Florida Law.

(b) Biscayne is duly organized and incorporated, validly existing and in good standing as a bank under the Laws of Florida, and is not a member of the Federal Reserve System.

(c) Icy Beans Inc. is duly organized and incorporated, validly existing and in good standing as a business corporation, and Vizcaya Controls, LLC, is duly organized, validly existing and in good standing as a limited liability company, in each case under the Laws of Florida.

(d) Each of the BBI Companies (i) has all requisite power and authority (corporate and other) to own, lease and operate its properties and to carry on its business as it now is being conducted; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which it owns, leases or operates properties of a character, or in which it transacts business of a nature, that makes such qualification necessary, except where a failure to qualify to do business or be in good standing would not result in a BBI Material Change; and (iii) is not transacting business or operating any properties owned or leased by it in violation of any provision of Law, except where such transaction of business or operation of properties would not result in a BBI Material Change.

(e) The BBI Companies consist solely of BBI, Biscayne, Icy Beans Inc. and Vizcaya Controls, LLC. Since January 1, 2013, none of the BBI Companies has had a direct or indirect wholly owned or majority-owned subsidiary that is not one of the BBI Companies.

#### **3.02. Capital Stock.**

(a) BBI's authorized capital stock consists of 8,500,000 shares of BBI Common Stock, of which 4,627,107 shares are issued and outstanding as of the date of this Agreement, and no other classes or series.

(b) Biscayne's authorized capital stock consists of 8,500,000 shares of Biscayne Common Stock, of which 100 shares are issued and outstanding, and no other classes or series. All outstanding shares of Biscayne Stock are owned, beneficially and of record, by BBI.

(c) The authorized capital stock of Icy Beans Inc. consists of 1,000 shares of common stock, of which 10 shares are issued and outstanding and are owned beneficially and of record by BBI, and no other classes or series.

(d) Biscayne is the only member of Vizcaya Controls, LLC.

(e) Except as described in this Paragraph 3.02, none of the BBI Companies has any authorized or outstanding shares of capital stock or other equity interests. Each outstanding share of BBI Common Stock and Biscayne Common Stock, (i) has been duly authorized and is validly issued and outstanding, fully paid and non-assessable, and (ii) has not been issued in violation of the preemptive rights of any Person.

**3.03. Principal Shareholders.** Except as Previously Disclosed to Buyer, to the Knowledge of BBI, no Person directly or indirectly owns, beneficially or of record (as determined in accordance with Rule 13d-3 under the 1934 Act), more than five percent (5%) of the outstanding shares of any class or series of BBI Stock.

**3.04. Subsidiaries.** With the exception of Biscayne's outstanding Biscayne Common Stock, all of which is held beneficially and of record by BBI, and other equity securities included in BBI's or Biscayne's investment portfolios on September 30, 2018, none of the BBI Companies owns any stock or other equity interest in any other corporation, service corporation, joint venture, partnership, limited liability company or other entity, and none of the BBI Companies has any other subsidiaries.

**3.05. Convertible Securities, Options, Redemptions, Etc.** Except as Previously Disclosed to Buyer, there are no outstanding (a) securities or other obligations (including debentures or other debt instruments) issued by any of the BBI Companies which are convertible into shares of their capital stock or any other securities or equity interests issued by any of them, (b) options, warrants, rights, calls or other commitments of any nature which obligate any of the BBI Companies to issue, or entitle any Person to receive or acquire from any of them, any shares of their respective capital stocks or any other securities or equity interests issued by any of them, (c) plans, agreements or other arrangements pursuant to which shares of capital stock of any of the BBI Companies or any other capital stock, equity interests or other securities, or options, warrants, rights, calls or other commitments of any nature pertaining to any securities of any of them, have been or may be issued by any of them, or (d) contractual obligations or other agreements of any of the BBI Companies to (i) repurchase, redeem or otherwise acquire, or (ii) register under the Securities Act of 1933, as amended, any shares of their capital stock, equity interests or other securities.

**3.06. Authorization and Validity of Agreement.** This Agreement has been duly and validly approved by BBI's and Biscayne's Boards of Directors and executed and delivered on BBI's and Biscayne's behalves by their officers thereunto duly authorized. Subject only to approval of this Agreement by the shareholders of BBI in the manner required by Law and receipt of Required Regulatory Approvals, (a) BBI and Biscayne each has the corporate power and authority to execute and deliver this Agreement and to perform its respective obligations and agreements and carry out the transactions described herein, (b) all corporate proceedings and approvals required to authorize BBI and Biscayne to enter into this Agreement and to perform their obligations and agreements and carry out the transactions described herein have been duly and properly completed or obtained, and (c) this Agreement constitutes the valid and binding agreement of each of BBI and Biscayne, as applicable, and is enforceable against each of them, respectively, in accordance with its terms (except to the extent enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, (ii) legal and equitable limitations on the availability of injunctive relief, specific performance and other equitable remedies, and (iii) general

principles of equity and applicable Laws or court decisions limiting the enforceability of indemnification provisions).

**3.07. Validity of Transactions; Absence of Required Consents or Waivers.** Subject only to approval of this Agreement by BBI's shareholders in the manner required by Law and receipt of all Required Regulatory Approvals, neither the execution and delivery of this Agreement, nor consummation of the transactions described herein, nor compliance by BBI or Biscayne with any of their obligations or agreements contained herein, nor any action or inaction by BBI or Biscayne required herein, will: (a) conflict with or result in a breach of the terms and conditions of, or constitute a default or violation (with or without notice or lapse of time, or both) under, or give rise to any right of termination, amendment, acceleration or cancellation of, or require any payment under, (i) any of the BBI Companies' respective Articles of Incorporation or Bylaws or other organizational documents, or (ii) any Material Contract to which any of them are bound or the business, capital stock or Assets of any of them are subject; (b) result in the creation or imposition of any Lien, claim, interest, charge, restriction or encumbrance upon any of the Assets of any of the BBI Companies; (c) violate any applicable Law, or any judgment, order, writ, injunction or decree of any court, administrative or regulatory agency or governmental body; or (d) result in the acceleration of any material obligation or material Liability of any of the BBI Companies.

Except as Previously Disclosed to Buyer, no consents, approvals or waivers are required to be obtained from any Person in connection with BBI's and Biscayne's execution and delivery of this Agreement, or the performance of their obligations or agreements, or consummation of the transactions, described herein, except for the approval of BBI's shareholders and Required Regulatory Approvals.

**3.08. Books and Records.** The BBI Companies' respective business records, books of account, management information and data systems (a) have been maintained in material compliance with all applicable legal, regulatory and accounting requirements, and such books and records are complete and reflect accurately in all material respects their respective Assets and Liabilities, items of income and expense, and all transactions and dispositions of Assets, and (b) are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of BBI and Biscayne or their independent accountants, consultants and/or contractors (including all means of access thereto and therefrom).

BBI's and Biscayne's respective corporate minute books are complete and accurately reflect in all material respects all corporate actions taken by their respective shareholders, boards of directors, and all committees thereof.

**3.09. Reports to Regulatory Authorities.**

(a) Since January 1, 2013, each of the BBI Companies has timely filed all reports, registrations and statements and other filings, together with any amendments required to be made with respect thereto, that it or they were required to file with any Regulatory Authority (collectively, the "BBI Reports"). Each BBI Report (i) was complete, in correct form in all material respects, and complied in all material respects with all Laws applicable thereto and, in the case of each call report and its accompanying schedules, was prepared in all material respects in accordance with applicable regulatory accounting principles and practices, and (ii) at the time it was filed (or if amended or superseded by a subsequent filing prior to the date of this Agreement, then on the date of that subsequent filing) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) Since January 1, 2013, none of the BBI Companies has been notified by any Regulatory Authority that any BBI Report was deficient in any material respect as to form or content, and no BBI Report is the subject of any ongoing review or investigation (whether formal or informal, and including a voluntary document request) or unresolved comments.

### **3.10. Disclosure and Accounting Controls.**

(a) BBI and Biscayne maintain disclosure controls and procedures which are reviewed regularly by BBI's management, including its officers who serve or are deemed to serve as its principal executive officer and principal financial officer, and which are designed to ensure that information required to be disclosed by BBI and Biscayne in reports they file with or submit to their Regulatory Authorities is recorded, processed, summarized, communicated to BBI's management, and reported within the time periods specified by Law.

(b) The BBI Companies maintain internal control over financial reporting which provides reasonable assurance regarding the reliability of BBI's financial reporting and the preparation of its consolidated financial statements in accordance with GAAP, including policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the BBI Companies' transactions and dispositions of their Assets, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of their financial statements in accordance with GAAP, and receipts and expenditures are made only in accordance with authorizations of their managements and Boards of Directors, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the BBI Companies' Assets that could have a material effect on BBI's consolidated financial statements.

(c) Since January 1, 2013, (i) none of the BBI Companies nor, to the Knowledge of BBI, any of their directors, officers, employees, auditors, accountants or representatives, has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of any of the BBI Companies or their respective disclosure controls and procedures, including any material complaint, allegation, assertion or claim that any of them has engaged in questionable accounting or auditing practices, and (ii) no attorney or auditor representing any of the BBI Companies, whether or not employed by them, has reported to BBI's Board of Directors or any committee thereof evidence of a material violation of Law, breach of fiduciary duty or similar violations by any of the BBI Companies or any of their respective officers, directors, employees or agents or, to the Knowledge of BBI, to any director or officer of BBI.

### **3.11. Consolidated Financial Statements.**

(a) The BBI Audited Financial Statements, and the BBI Interim Financial Statements (i) comply as to form in all material respects with the applicable published rules and regulations of Regulatory Authorities with respect thereto, (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except as indicated in such statements or in the notes thereto, (iii) have been prepared from and are in accordance with the BBI Companies' books and records, and (iv) present fairly in all material respects BBI's consolidated financial position and their results of operations and, in the case of the BBI Audited Financial Statements, its comprehensive income, stockholders' equity and cash flows, as of the dates indicated and for the periods specified therein (except to the extent that the BBI Interim Financial Statements are subject to normal and recurring year-end adjustments that are not expected to be material in amount or effect, except as indicated in such interim financial statements or notes thereto). The BBI Audited Financial Statements have been audited by Morrison Brown Argiz & Farra, LLC, which serves as BBI's independent auditor, as evidenced by that firm's reports included therein.



(b) None of the BBI Companies is a party, or has any commitment to become a party, to any joint venture, partnership agreement or similar contract (including any contract relating to any transaction, arrangement or relationship between or among any of the BBI Companies and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or other Person) where the purpose or effect of any such arrangement is to avoid inclusion or disclosure of any material transaction involving any of the BBI Companies in BBI's consolidated financial statements.

### 3.12. Tax Matters.

(a) For purposes of this Paragraph 3.12, the following definitions shall apply:

*"Treasury Regulations"* means regulations (including temporary regulations) promulgated by the US Department of the Treasury with respect to the Code or other federal tax statutes.

*"Tax"* or *"Taxes"* means any and all federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, escheats, unclaimed property, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority or political subdivision, whether disputed or not.

*"Tax Returns"* means any and all returns, reports or forms (including elections, declarations, amendments, schedules, information returns or attachments thereto) required to be filed or to have been filed with a governmental authority with respect to Taxes.

(b) Since January 1, 2013, each of the BBI Companies has filed all Tax Returns that it was required to file under applicable Law. All such Tax Returns (including all amendments, if any) were correct and complete in all material respects, all Taxes shown thereon as owing have been fully and timely paid, and none of the BBI Companies is the beneficiary of any extension of time within which to file any Tax Return which has not been filed. No written claim has been made within the past six years by an authority in a jurisdiction where any of the BBI Companies does not file Tax Returns that any of them is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the Assets of any of the BBI Companies. No deficiency with respect to Taxes has been proposed, asserted or assessed in writing against any BBI Company that has not been fully paid or adequately reserved in the BBI Audited Financial Statements and the BBI Interim Financial Statements.

(c) Each of the BBI Companies has withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party.

(d) No federal, state, local, or foreign income Tax Returns filed with respect to any of the BBI Companies are, to the Knowledge of BBI, the subject of an ongoing audit. Each of the BBI Companies has disclosed on its respective federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code §6662, and none of the BBI Companies, nor any officer (or employee responsible for Tax matters) of any of them, expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. To the Knowledge of BBI, no foreign, federal, state, or local tax audits or administrative or

judicial Tax proceedings are pending or being conducted with respect to any of the BBI Companies, and none of the BBI Companies has received from any foreign, federal, state, or local taxing authority (including jurisdictions where they have not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review or (ii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority against any of the BBI Companies.

(e) None of the BBI Companies has (i) waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, (ii) been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii), or (iii) any Liability for the Taxes of any Person under Reg. §1.1502-6 (or any similar Law), as a transferee or successor, by contract, or otherwise.

(f) The aggregate unpaid Taxes of the BBI Companies (i) did not, as of the date of this Agreement, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) at September 30, 2018, set forth on the face of the statement of financial condition included in the BBI Interim Financial Statements, and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the BBI Companies in filing their Tax Returns. Since the date of the statement of financial condition included in the above BBI Interim Financial Statements, none of the BBI Companies has incurred any Liability for Taxes arising from extraordinary gains or losses, as those terms are used in GAAP, outside the Ordinary Course.

(g) None of the BBI Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in Code §7121 (or any corresponding or similar provision of Law) executed on or prior to the Closing Date;

(iii) installment sale or open transaction disposition made on or prior to the Closing Date;

(iv) prepaid amount or deferred revenue received on or prior to the Closing Date; or

(v) any election made pursuant to Code Section 108(i) on or before the Closing Date.

(h) Since January 1, 2013, none of the BBI Companies has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code §355.

(i) Each of the BBI Companies currently is an accrual basis taxpayer.

(j) Except as Previously Disclosed to Buyer, the transactions contemplated in this Agreement will not (i) cause the vesting, exercisability or delivery of, or increase in the amount or value of, any payments or benefits to any officer or director of a BBI Company or (ii) result in any

amount failing to be deductible by any of the BBI Companies, or Buyer by reason of Section 280G of the Code or being subject to the sanctions imposed under Section 4999 of the Code.

(k) None of the BBI Companies has been a member of an affiliated group filing a consolidated federal income tax return (other than a group the common parent of which is BBI) or has any Liability for the Taxes of any Person (other than the BBI Companies) under Treasury Regulation Section 1.1502-6 (or any similar provision of Law) as a transferee or successor, by contract, or otherwise.

(l) Since January 1, 2013, none of the BBI Companies has submitted any private letter ruling request to the IRS or entered into any closing agreements or gain recognition agreements with respect to Taxes which were requested or executed during that period.

(m) None of the BBI Companies nor, to the Knowledge of BBI, any other Person, has taken or proposes to take any action (other than actions directly related to the Merger), and no event (other than events directly related to the Merger) has occurred, that has resulted or may or could result in a loss of the ability of BBI and Biscayne before the Merger, or the ability of Buyer after the Merger, to utilize acquired tax benefits from the transaction, including federal and state net operating loss carryforwards and federal and state unrealized built in Tax losses reflected in the BBI Audited Financial Statements.

### **3.13. Absence of Changes or Certain Other Events.**

(a) Since December 31, 2017, and except as reflected in the BBI Interim Financial Statements, each of the BBI Companies has conducted its business only in the Ordinary Course, and there has been no BBI Material Change, and, to the Knowledge of BBI, there has occurred no event or development, and there currently exists no condition or circumstance, which, individually or in the aggregate, and with the lapse of time or otherwise, could reasonably be expected to cause, create or result in a BBI Material Change.

(b) Except as Previously Disclosed to Buyer, since December 31, 2017, and except as described in Paragraph 3.14 below, none of the BBI Companies has incurred any material Liability, engaged in any material transaction, suffered any material loss, destruction, or damage to any of the BBI Real Property or their other Assets, or made a material acquisition or disposition of any Assets (with the exception of real estate acquired upon foreclosure of a Loan or by deed in lieu of foreclosure, in either case in the Ordinary Course), or entered into any Material Contract.

(c) Since December 31, 2017, and ending on the date of this Agreement none of the BBI Companies has increased the salaries, compensation or general benefits payable or provided to its employees with the exception of routine merit increases in the salaries of its employees at times and in amounts that are consistent with their past practices and their salary administration and review policies and procedures.

**3.14. Absence of Undisclosed Liabilities.** Except as reflected in the BBI Interim Financial Statements, none of the BBI Companies has any material Liability (including Tax Liabilities or unfunded Liabilities under employee benefit plans or arrangements), other than (a) increases in Biscayne's deposit accounts in the Ordinary Course since September 30, 2018, or (b) unfunded commitments to make, issue or extend Loans entered into in the Ordinary Course and in accordance with its normal lending policies and practices and which, either individually or in the aggregate, do not exceed the lesser of amounts which are consistent with Biscayne's lending practices prior to the date of this Agreement or the maximum amounts permitted by applicable banking regulations.

**3.15. Compliance with Existing Obligations.** Each of the BBI Companies has performed in all material respects all obligations required to be performed by it under, and none of them are in default in any material respect under, or in violation in any material respect of, the terms and conditions of its Articles of Incorporation, Bylaws, and/or any Material Contract to which it is a party or bound, by which its business, operations, BBI stock or Assets are subject or affected, or under which it or its property receives benefits, and no event has occurred which, with the lapse of time or giving of notice, or otherwise, would constitute such a default or violation.

**3.16. Litigation and Compliance with Law.**

(a) Except as Previously Disclosed to Buyer, there is no Litigation or, to the Knowledge of BBI, any facts or circumstances which reasonably could be expected to result in any Litigation, including any such action by any Regulatory Authority, which currently exists or is ongoing, pending or, to the Knowledge of BBI, threatened against any of the BBI Companies or any Person in his or her capacity as a director, officer or employee of any of the BBI Companies, or any of their respective Assets, or otherwise relating to or affecting any of the BBI Companies or their respective businesses or Assets.

(b) Each of the BBI Companies, and each of their respective employees, has all licenses, permits, orders, and authorizations or approvals ("Permits") of, and has made all filings, applications and registrations with, all Regulatory Authorities and all other federal, state, local or foreign governmental or regulatory agencies, that are required by Law and that are material to the conduct of its businesses, and the performance of their duties as they currently are conducted or performed, or for it to own, lease and operate its properties as they currently are operated. All such Permits are in full force and effect, and to the Knowledge of BBI, no material violations have occurred with respect to any such Permits. No proceeding to suspend, cancel, revoke or limit any Permit is pending or, to the Knowledge of BBI, threatened nor, to the Knowledge of BBI do any grounds for any of the foregoing exist.

(c) None of the BBI Companies is subject to any supervisory agreement, enforcement order, writ, injunction, capital directive, supervisory directive, memorandum of understanding or other similar agreement, order, directive, memorandum or consent of, with or issued by any Regulatory Authority relating to its financial condition, directors or officers, employees, operations, capital, public disclosure and reporting, regulatory compliance or any other matter ("Regulatory Directive"), and there are no judgments, orders, stipulations, injunctions, decrees or awards against any of the BBI Companies which limit, restrict, regulate, enjoin or prohibit in any material respect, or require any change in, any of their present or past business, controls, policies, procedures or practices ("Orders"). To the Knowledge of BBI, no Regulatory Authority or any court is contemplating, threatening or requesting the issuance of any such Regulatory Directive or Order.

(d) There (i) is no unresolved violation or exception identified by any Regulatory Authority relating to any examinations or inspections of any BBI Company; (ii) have been no written or, to the Knowledge of BBI, oral formal or informal inquiries by, from, or disagreements or disputes with, any Regulatory Authority with respect to the BBI Companies' businesses, operations, controls, policies, procedures, practices or compliance with applicable Laws, or written or, to the Knowledge of BBI, oral notifications asserting that any of the BBI Companies are not in compliance with any Laws which such Regulatory Authority enforces; and (iii) is not any pending or, to the Knowledge of BBI, threatened, nor has any Regulatory Authority indicated an intention to conduct, any investigation or review of any of the BBI Companies' businesses, operations, controls, policies, procedures, practices or compliance with applicable Laws.

(e) None of the BBI Companies is in violation or default in any material respect under, and each of them has complied in all material respects with, all Laws applicable to them and their businesses. Except as Previously Disclosed to Buyer, no Person or authority has asserted a claim, and, to the Knowledge of BBI, there is no reasonable basis for any claim by any Person or authority, for compensation, reimbursement, damages or other penalties or relief for any alleged violations or breaches in any material respect under any Law.

(f) Since January 1, 2013, except as required by the Bank Secrecy Act and except as Previously Disclosed to Buyer, to the Knowledge of BBI no employee of any of the BBI Companies has provided or is providing information to any law enforcement agency regarding the commission or possible commission of any crime or the violation or possible violation of any applicable Law by any of the BBI Companies or any employee thereof acting in his or her capacity as such. None of the BBI Companies nor any officer, employee, contractor, subcontractor or agent of a BBI Company has discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against any employee of a BBI Company in the terms and conditions of employment because of any act of such employee described in 18 U.S.C. § 1514A(a).

### **3.17. Real Properties.**

(a) BBI has Previously Disclosed to Buyer a list of all Parcels and has previously provided to Buyer a true and complete copy as currently in effect, and as it may have been amended, of each (i) lease agreement ("Lease Agreement") pertaining to each Parcel in which any of the BBI Companies is the lessee with a leasehold interest, or is the lessor, and (ii) each operating agreement, management agreement or security agreement pertaining to each Parcel.

(b) With respect to each Parcel owned by a BBI Company, that BBI Company has good and marketable fee simple title to that Parcel and owns the same free and clear of all Liens, other than Permitted Liens.

(c) With respect to each Parcel in which a BBI Company holds a leasehold interest pursuant to a Lease Agreement, (i) that BBI Company has unconditionally accepted occupancy of, currently is occupying, and has an enforceable right to occupy, the Parcel in accordance with the terms of the Lease Agreement; (ii) the lease term, commencement date, expiration date, renewal terms, deposits, pre-pays, off-sets, cost sharing, fees, taxes, insurance and other maintenance costs, and current and future rent applicable to the Parcel, are as set forth in the Lease Agreement; (iii) the Lease Agreement is in full force and effect, has not been modified or amended; (iv), except as Previously Disclosed to Buyer, the terms and conditions of the Lease Agreement will continue without modification notwithstanding the transactions described herein; (v) except as Previously Disclosed to Buyer, the transactions described herein will not constitute a transfer, sublease or assignment in violation of any term or condition of the Lease Agreement, require the approval or consent of the landlord under the Lease Agreement, or prevent the exercise of, or result in the loss of, any right or option to renew or extend the Lease Agreement or to purchase that Parcel; (vi) the BBI Company that is the lessee has performed all of its obligations (including the payment of rent) under the Lease Agreement, no event of default by it exists or has occurred under the Lease Agreement, and no action or failure to act has occurred that, upon the passage of time or otherwise, may become or result in a default or event of default under the terms of the Lease Agreement (including any default that would prevent the exercise of, or result in the loss of, any right or option to renew or extend the Lease Agreement or to purchase that Parcel); and (vii) to the Knowledge of BBI, the lessor of that Parcel has performed all of the lessor's obligations under the Lease Agreement, no event of default by the lessor exists or has occurred under the Lease Agreement, and no action or failure to act has occurred that, upon the passage of time or otherwise, may become or result in a default or event of default under the terms of the Lease Agreement.

(d) Each Parcel upon which a banking office of Biscayne is situated, or which otherwise is used by a BBI Company in conjunction with its business, (i) complies in all material respects with all applicable Law and orders of any governmental or regulatory authority, including those relating to zoning, building and use permits, and the Americans with Disabilities Act, and (ii) may, under applicable zoning ordinances, be used for the purposes for which it currently is used as a matter of right rather than by grant of variance or as a conditional or nonconforming use.

(e) There are no pending or, to the Knowledge of BBI, threatened or proposed condemnation or eminent domain proceedings against any of the BBI Real Property, or any change in directional activity, road width, curb cuts, medians or islands, or construction which would impact traffic flow or visibility or signage of any of the BBI Real Property that is owned or leased by any of the BBI Companies.

(f) None of the BBI Companies is a party to any contract, agreement or arrangement relating to the purchase, sale, rental, management, maintenance or servicing of any of the BBI Real Properties that is owned or leased by any of the BBI Companies, or of improvements or fixtures located thereon, that may not be terminated without penalty upon 30 days' notice.

(g) With respect to each Parcel that currently is used by any of the BBI Companies as an office, (i) the improvements and fixtures included in or on that Parcel are, considered in the aggregate, in satisfactory condition and repair and performing the functions and operations for which they were designed, and (ii) there does not exist any condition which materially and adversely affects the economic value or marketability of that Parcel or materially detracts from, interferes with, or restricts the present or future use of that Parcel or those improvements and fixtures for the purposes for which they currently are used.

(h) To the Knowledge of BBI, there are no special or other assessments for public improvements or otherwise currently affecting or pending or threatened with respect to any Parcel, nor, to the Knowledge of BBI, are there any contemplated improvements affecting any Parcel which may result in any such special or other assessments

### **3.18. Loans, Accounts, Notes and Other Receivables.**

(a) All Loans and Sold Loans (i) have resulted from bona fide business transactions in the Ordinary Course, (ii) were made in conformity in all material respects with industry standard practices and procedures and in compliance in all material respects with Law applicable thereto (including consumer protection and fair lending laws and regulations) and, in the case of Sold Loans, all requirements of any purchaser, investor, government agency or other Person which purchased or guaranteed the Sold Loan, and (iii) in the case of Loans, are owned by BBI or Biscayne free and clear of all Liens, encumbrances, assignments, repurchase agreements or other exceptions to title, or the ownership or collection rights of any other Person, except for Liens granted to the Federal Home Loan Bank of Atlanta to secure advances to Biscayne in the Ordinary Course.

(b) All records of the BBI Companies regarding all outstanding Loans and Sold Loans, all BBI Real Property acquired through foreclosure or a deed in lieu of foreclosure, and collateral for Loans and Sold Loans, are accurate in all material respects, and each Loan which the BBI Companies' Loan documentation indicates is secured by any real or personal property or property rights ("Loan Collateral") is secured by valid, perfected and enforceable Liens, assignments or other security interests on all such Loan Collateral to the extent indicated and having the priority described in the records of such Loan.

(c) Each Loan and Sold Loan, and each guaranty therefor, is the legal, valid and binding obligation of the obligor or guarantor thereon (subject to the application of general principles of equity and to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws), and no defense, offset or counterclaim has been asserted in writing with respect to any such Loan, Sold Loan or guaranty.

(d) BBI has Previously Disclosed to Buyer a listing, as of September 30, 2018, of:

(i) each Loan which was carried in a nonaccrual status or classified by any Regulatory Authority, or by BBI or Biscayne itself, as "Loss," "Doubtful," "Substandard" or "Special Mention" (or otherwise by words of similar import), or which otherwise has been designated as a special asset, a "potential problem loan," or for special handling, or has been placed on any "watch list" or similar internal list because of concerns regarding the ultimate collectability or deteriorating condition of such Loan or any obligor or Loan Collateral therefor or otherwise;

(ii) each Loan which was past due more than 30 days past the scheduled payment date as to the payment of principal and/or interest;

(iii) each Loan, other than those included in the Loans Previously Disclosed to Buyer pursuant to (i) or (ii) above, as to which any obligor (including the borrower or any guarantor) otherwise was in default, was, to the Knowledge of BBI, the subject of a proceeding in bankruptcy, or on which any obligor has indicated in writing any inability or intention not to repay such Loan in accordance with its terms;

(iv) each Loan which had been held for resale for as much or more than 30 days but not sold;

(v) each Loan currently outstanding, directly or indirectly, to or guaranteed by any current or former officer or director of any of the BBI Companies, or to any entity controlled by any current or former officer or director, together with any such Loan as to which there has been any default, forgiveness, restructuring or waiver of any terms since January 1, 2013.

(e) With respect to Sold Loans, BBI has Previously Disclosed to Buyer written listings reflecting:

(i) each Sold Loan on the balance sheet that has been repurchased from an investor or other purchaser;

(ii) each Sold Loan which is in the process of being repurchased or which any of the BBI Companies has been requested in writing to repurchase by any investor or other purchaser;

(iii) each Sold Loan that any of the BBI Companies has identified in writing as having a material risk of repurchase from any investor or other purchaser;

(iv) each Sold Loan as to which any investor or other purchaser has requested in writing indemnification from any of the BBI Companies, or as to which there is any outstanding mortgage insurance claim, together with a statement as to whether any of the BBI

Companies have agreed to or rejected the indemnification request, and, in the case of each Sold Loan as to which any of the BBI Companies have agreed to a request for indemnification, a description of the terms of that indemnification; and

(v) each Sold Loan sold by any of the BBI Companies under terms which impose repurchase or guaranty obligations on the selling BBI Company.

(f) With the exception of those Loans Previously Disclosed to Buyer as described in Paragraphs 3.18(d) and 3.18(e) above, to the Knowledge of BBI each of the Loans, and each Sold Loan as to which an investor or other purchaser has recourse against any of the BBI Companies in the event of default or nonpayment, is collectible in the Ordinary Course, or in the ordinary course of the business of the investor or other purchaser that purchased the Sold Loan, in an amount which is not less than the amount at which it is carried or should be carried in accordance with GAAP on their books and records.

(g) The BBI Companies' reserve for possible Loan losses (the "Loan Loss Reserve") has been established in conformity with GAAP, sound banking practices and all applicable rules, requirements and policies of Regulatory Authorities and, in the judgment of management of BBI and Biscayne, is reasonable in view of the size and character of the BBI Companies' Loan portfolio, current economic conditions and other relevant factors, and is adequate in all material respects to provide for losses relating to or the risk of loss inherent in the Loan portfolio of the BBI Companies, foreclosed BBI Real Property owned by them, and potential losses related to Loans previously sold by Biscayne and current and future repurchases of Sold Loans.

(h) Except for Loans Previously Disclosed to Buyer pursuant to Paragraph 3.18(d)(v) above, none of the BBI Companies is a party to any transaction or agreement, or is contemplated to be party to any proposed transaction or agreement, with, and there are no outstanding amounts payable to or receivable from, or advances by any of the BBI Companies to, and none of the BBI Companies is otherwise a creditor or debtor to, any director or executive officer of BBI or Biscayne, or any five percent or greater shareholder of BBI, or with or to any of their respective affiliates or, to the Knowledge of BBI, any Person or entity controlling, controlled by or under common control with any of the foregoing, other than part of the normal and customary terms of such Persons' employment or service as a director or executive officer of BBI or Biscayne and other than deposits held by Biscayne in the Ordinary Course. No such Person has had any direct or indirect interest in any property, Assets, business or right owned, leased, held or used by any of the BBI Companies, other than deposits held by Biscayne in the Ordinary Course. All Loans, agreements and transactions between any of the BBI Companies and any of their respective directors, executive officers and affiliates comply, to the extent applicable, in all material respects with Regulation O, Sections 23A and 23B, Regulation W of the Federal Reserve Board.

**3.19. Securities Portfolio and Investments.** BBI has Previously Disclosed to Buyer a listing of all securities owned, of record or beneficially, by any of the BBI Companies as of September 30, 2018. All securities owned, of record or beneficially, by any of the BBI Companies as of the date hereof are held free and clear of all Liens or any other restriction or rights of any other Person, whether contractual or statutory (other than pledges to the Federal Home Loan Bank of Atlanta to secure advances to Biscayne in the Ordinary Course, sales of securities under agreements to repurchase entered into by Biscayne in the Ordinary Course with its customers, and restrictions imposed by and the rights of the issuers of such securities), which would materially impair the ability of any of the BBI Companies to dispose freely of any such security and/or otherwise to realize the benefits of ownership at any time. There are no voting trusts or other agreements or undertakings to which any of the BBI Companies is a party with respect to the voting of any such securities. With respect to all repurchase agreements under which BBI or Biscayne has "purchased" securities under agreement to resell, it has a valid, perfected first



lien or security interest in the government securities or other collateral securing the repurchase agreement, and the value of the collateral securing each such repurchase agreement equals or exceeds the amount of the debt owed to it which is secured by such collateral.

Since September 30, 2018, there has been no material deterioration or adverse change in the quality, or any material decrease in the value, of the BBI Companies' securities portfolios as a whole.

**3.20. Personal Property and Other Assets.** All banking equipment, data processing equipment, other equipment, vehicles, and other personal property owned and used by either BBI or Biscayne and material to the operation of its business are owned by it free and clear of all Liens. None of the BBI Companies is a party to any contract, agreement or arrangement relating to the purchase, sale, rental, management, maintenance or servicing of any of their banking equipment, data processing equipment or other equipment that may not be terminated without penalty upon 30 days' notice. To the Knowledge of BBI, all personal property material to the business of each of the BBI Companies is in good operating condition and repair.

**3.21. Intellectual Property.**

(a) BBI has Previously Disclosed to Buyer a list, and copies of all licenses, contracts, or other agreements or arrangements relating to the ownership and/or use of, any and all of their Intellectual Property.

(b) The BBI Companies own, possess or have the right to use, and to assign their use or ownership of, their respective corporate names and Intellectual Property and other proprietary information material to the conduct of their business as now conducted, free and clear of any and all Liens or the rights of any other Person that would restrict the ability of Buyer to use the BBI Companies' material Intellectual Property. To the Knowledge of BBI, none of their Intellectual Property, or the BBI Companies' use thereof, violates, infringes, or is in conflict with any patent, license, trademark, trade name, copyright, trade secret or proprietary right of any other Person. No Person has asserted a written claim against any of the BBI Companies, or provided any of them with any written notice of a claim or potential claim, involving their Intellectual Property or their use thereof and, to the Knowledge of BBI, no such claim is threatened or contemplated.

**3.22. Privacy Matters.** For purposes of this Paragraph 3.22, "IPI" shall include any "individually identifiable personal information," as that term is defined in 12 CFR Part 1016, relating to a customer, former customer or prospective customer of any BBI Company. The BBI Companies, as applicable, are the sole owners of all IPI relating to customers, former customers and prospective customers that will be transferred to Buyer pursuant to this Agreement and the other transactions contemplated hereby. To the Knowledge of BBI, no facts or circumstances exist which would cause the collection and use of such IPI by any of the BBI Companies, the transfer of such IPI to Buyer, and the use of such IPI by Buyer as contemplated by this Agreement, not to materially comply with all applicable privacy policies, the Fair Credit Reporting Act of 1970, as amended, the Gramm-Leach-Bliley Act of 1999, and all other applicable Laws relating to privacy, and any requirement of a contract or industry standard relating to privacy and data security.

Biscayne is in compliance in all material respects with the requirements of the Gramm-Leach-Bliley Act of 1999, and the regulations promulgated thereunder, and with all other applicable Laws and regulations with respect to the (i) maintenance of the security and confidentiality of customer records and information; (ii) protection against any threats or hazards to the security or integrity of such records; and (iii) protection against unauthorized access to or use of such records or information. To the

Knowledge of BBI, no data security breach has occurred that involves or affects the IIPI of Biscayne's customers.

### **3.23. Environmental Matters.**

**(a)** As used in this Agreement:

**(i)** "Environmental Laws" means Laws, orders, permits, opinions or agency requirements relating to pollution or protection of the environment (including ambient air, surface water, ground water, land surface, or subsurface strata), natural resources or human health and safety, including the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution and Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), and the Occupational Health and Safety Act (29 U.S.C. § 651 et seq.), as such Laws have been or in the future are amended or supplemented, and other Laws relating to emissions, discharges, releases, or threatened releases of any pollutant or Hazardous Material, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of any Hazardous Material.

**(ii)** "Hazardous Material" means materials, substances, wastes, chemical substances, or mixtures listed, defined, designated, classified or regulated as "hazardous," "toxic," "radioactive," a "pollutant," or a "contaminant," or otherwise regulated under any Environmental Laws, whether by type or quantity, including pesticides, oil or other petroleum products or byproducts, asbestos or materials containing (or presumed to contain) asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, lead, radon, methyl tertiary butyl ether, and mold or other fungi which form the basis for material Liability under any Environmental Laws.

**(iii)** "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, spillage dispersal, leaching, migration or other movement of a Hazardous Material into the indoor or outdoor environment or into or out of BBI Real Property, including the movement of contaminants through or in the air, soil, surface water, groundwater or land surface or subsurface.

**(b)** BBI has Previously Disclosed to Buyer a list and copies of all written reports, correspondence, notices, Permits, studies, audits, analyses and other information or materials, if any, which, to the Knowledge of BBI, are in its possession pertaining to environmental surveys or assessments of the BBI Real Property and any improvements thereon, the presence or Release of any Hazardous Material on, under, affecting or otherwise involving, any of the BBI Real Property, or any violation or alleged violation of Environmental Laws on, under, affecting or otherwise involving the BBI Real Property or involving any of the BBI Companies.

**(c)** There has been no Release of any Hazardous Material on or from any of the BBI Real Property or, to the actual knowledge of management of Biscayne, any real property that serves as collateral for a Loan, which constitutes a violation of any Environmental Laws, and there has been no removal, clean-up or remediation of any Hazardous Material from, on or relating to any of the BBI Real Property or, to the actual knowledge of management of Biscayne, any real property that serves as collateral for a Loan.

(d) None of the BBI Companies has violated in any material respect any Environmental Laws relating to any of the BBI Real Property, and, to the Knowledge of BBI, there has been no violation of any Environmental Laws relating to any of the BBI Real Property or, to the actual knowledge of management of Biscayne, any real property that serves as collateral for a Loan, by any other Person for whose Liability with respect to any particular matter or violation any of the BBI Companies is or is reasonably likely to be responsible or liable.

(e) None of the BBI Companies is subject to any Liabilities of any kind and nature which arise under any Environmental Law, or which result from or are based upon the Release of any Hazardous Materials on, from or relating to any of the BBI Real Property or, to the Knowledge of BBI, any real property that serves as collateral for a Loan.

(f) To the Knowledge of BBI, no facts, events or conditions relating to any of the BBI Real Property, or the operations of any of the BBI Companies, will prevent, hinder or limit continued material compliance with Environmental Laws or are reasonably likely to give rise to any Litigation, investigation, response, emergency removal, remedial or corrective actions or Liabilities pursuant to Environmental Laws.

(g) To the Knowledge of BBI there is not located at any of the BBI Real Properties any (i) underground storage tanks, (ii) landfills, (iii) surface impoundments, (iv) asbestos-containing material, or (v) equipment containing polychlorinated biphenyls.

(h) There is no Litigation pending or, to the Knowledge of BBI, threatened before any court, governmental agency, or authority or other forum in which any of the BBI Companies has been or, with respect to threatened Litigation, would reasonably be expected to be, named as a defendant (i) for alleged noncompliance (including by any predecessor) with or Liability under any Environmental Law or (ii) relating to the Release of any Hazardous Material, whether or not occurring at, on, under, adjacent to, or affecting (or potentially affecting) any of the BBI Real Property or any site currently or formerly owned, leased, or operated by any BBI Company.

**3.24. Absence of Brokerage or Finders Commissions.** Except for BBI's engagement of Keefe, Bruyette & Woods, (a) all negotiations relative to this Agreement and the transactions described herein have been carried on by BBI directly (or through its legal counsel) with Buyer (or through its legal counsel), and no Person has been retained by or has acted on behalf of, pursuant to any agreement, arrangement or understanding with, or under the authority of, BBI or Biscayne or their respective Boards of Directors as a broker, finder or agent, or has performed similar functions, or otherwise is or may be entitled to receive or claim a brokerage fee or other commission or compensation, in connection with or as a result of the transactions described herein, and (b) none of the BBI Companies has agreed, or has any obligation, to pay any brokerage fee or other commission, fee or other compensation to any Person in connection with or as a result of the transactions described herein.

**3.25. Material Contracts.** Except as Previously Disclosed to Buyer, none of the BBI Companies is a party to or bound by any Material Contract.

**3.26. Employment Matters: Employee Relations.**

(a) BBI has Previously Disclosed to Buyer a list, as of the date hereof, of all persons who are employees of, or independent contractors or consultants to, any of the BBI Companies that sets forth for each such individual his or her name, employer, title or position (including whether full or part time), hire date, base salary or rate of compensation, target bonus opportunity (if any), and accrued but unpaid annual leave or vacation.

(b) Each of the BBI Companies (i) has paid in full to, or accrued in accordance with GAAP on behalf of, all its directors, officers and employees all wages, salaries, commissions, bonuses, fees and other direct compensation for all labor or services performed by them to September 30, 2018, and all vacation pay, sick pay, severance pay, overtime pay and other amounts for which, as of September 30, 2018, it was obligated under applicable Law or its existing agreements, benefit plans, policies or practices, and (ii) is in material compliance with all applicable Laws with regard to employment and employment practices, terms and conditions, wages and hours and other compensation matters, and, except as Previously Disclosed to Buyer, no Person has made any written claim that any of the BBI Companies is liable in any amount for any arrearage in wages or employment taxes or for any penalties for failure to comply with any of the foregoing.

(c) Except as Previously Disclosed to Buyer, no employee of any of the BBI Companies has accrued but unused vacation or other personal leave time (including sick leave) which is carried over from a prior year, and all currently accrued but unused leave time as of September 30, 2018, is reflected as a liability in the BBI Interim Financial Statements.

(d) Except as Previously Disclosed to Buyer, there is no Litigation by any Person pending or, to the Knowledge of BBI, threatened against any of the BBI Companies (or any of their officers, directors or employees), involving employment discrimination, harassment, wrongful discharge or other claims involving their employment practices, and, to the Knowledge of BBI, no facts or circumstances exist which reasonably could be expected to result in such.

(e) None of the BBI Companies is a party to or bound by any collective bargaining agreement with any of its employees, any labor union or any other collective bargaining unit or organization. There is no pending or, to the Knowledge of BBI, threatened labor dispute, work stoppage or strike involving any of the BBI Companies and any of their employees, or any pending or, to the Knowledge of BBI, threatened Litigation in which it is asserted that any of the BBI Companies has committed an unfair labor practice; and, to the Knowledge of BBI, there is no activity involving any of the BBI Companies or any of their employees seeking to certify a collective bargaining unit or engaging in any other labor organization activity.

### **3.27. Employment Agreements; Employee Benefit Plans.**

(a) For purposes of this Agreement, the following definitions shall apply:

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended.

“*COBRA*” means the provisions of Code Section 4980B and Part 6 of Subtitle B of Title I of ERISA.

“*HIPAA*” means the provisions of the Code and ERISA enacted by the Health Insurance Portability and Accountability Act of 1996, as amended.

(b) BBI has Previously Disclosed to Buyer a true and complete list, and has previously provided to Buyer a true and complete copy as amended and currently in effect, of:

(i) all employment, change in control, consulting and severance contracts with any current or former officer, employee, director or consultant of any of the BBI Companies (collectively, the “Employment Contracts”);

(ii) (A) all bonus, commission, incentive compensation, deferred compensation, pension, retirement, salary continuation, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock, stock appreciation rights, and stock option plans, (B) all medical, dental, health, and life insurance plans, (C) all severance, position elimination, vacation, sickness and other leave plans, (D) all disability and death benefit plans, and (E) all other employee benefit plans, contracts, or other compensatory plans, agreements or arrangements of any type (including any other stock-based plan or arrangements), in each case which are maintained or contributed to by any of the BBI Companies for the benefit of any of its or their current or former officers, employees, consultants or directors or any of their beneficiaries, or for which any of the BBI Companies otherwise may have any Liability (collectively, the "Plans"); and

(iii) with respect to each Employment Agreement and Plan, (A) the written document evidencing each such Employment Agreement or Plan or, with respect to any such Plan that is not in writing, a written description thereof, (B) the summary plan description, if any, with respect to any Plan that is required to distribute such document under ERISA, (C) any related trust agreements, insurance contracts or documents of any other funding arrangements, which related to any Employment Agreement or Plan, if any, (D) all amendments, modifications or supplements to any such document, (E) the most recent determination letter or opinion letter from the IRS, and (F) for each Plan that is subject to such requirement under ERISA, the most recent Form 5500 required to have been filed, including all schedules thereto. There are no other entities or other trades or businesses that can or should be treated as a single employer, together with any of the BBI Companies, with respect to any Plan under Section 414 of the Code, and there are no Persons who would be treated as leased employees of any of the BBI Companies under that Section of the Code. All reports and returns with respect to the Plans (and any Plans previously maintained by any of the BBI Companies) required to be filed with any governmental department, agency, service or other authority, including Internal Revenue Service Form 5500 ("Annual Report") or the one- time filing with the United States Department of Labor (the "DOL") in lieu of such Annual Report, or distributed to participants and their beneficiaries, have been properly and timely filed or distributed.

(c) To the Knowledge of BBI, all Employment Contracts and Plans currently are, and have been, maintained, funded and administered in material compliance with the terms of such Plans and requirements of applicable Law, including the Code and ERISA. There is no pending or threatened Litigation relating to any Employment Contract or Plan. None of the BBI Companies have engaged in a transaction with respect to any Plan that could subject it, any of them, their directors or employees or any Plan to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) or (l) of ERISA.

(d) To the Knowledge of BBI, all Plans which are intended to be qualified under Section 401(a) of the Code ("Retirement Plans") have complied with, and conform to, the provisions of Section 401(a) of the Code in all material respects, and each trust pursuant to which a Retirement Plan is funded is exempt under Section 501(a) of the Code. Each Retirement Plan has applied for and received a favorable determination letter, or is entitled to rely upon an advisory opinion letter issued with regard to a pre-approved plan document. There are no material issues relating to said qualification or exemption of the Retirement Plans, or the trusts funding such Retirement Plans, pending or, to the Knowledge of BBI, threatened before the IRS, the DOL, the Pension Benefit Guaranty Corporation or any court. There are no claims or, to the Knowledge of BBI, any issues or disputes with respect to any of the Employment Contracts or Plans or the administration thereof currently existing between any of the BBI Companies, or any trustee or other fiduciary thereunder, and any governmental agency, any current or former employee of any of the BBI Companies or beneficiary of any such

employee, or any other Person (other than claims for benefits in the Ordinary Course that are not the subject of current or, to the Knowledge of BBI, threatened or expected Litigation).

(e) All contributions, premiums or payments required to be made pursuant to the terms of each of the Employment Contracts and Plans have been timely made or, to the extent not required to be paid, have been fully provided for in accordance with GAAP and applicable funding principles and requirements and will continue to be so paid or provided for until the Closing Date, and all such contributions were fully deductible and not subject to excise taxes under the Code.

(f) There are no restrictions on the rights of any of the BBI Companies to amend or terminate unilaterally any Plan with respect to prospective benefit accruals without incurring any material Liability thereunder (other than normal administrative expenses). Termination or liquidation of any Plan or any of the investments or insurance contracts relating to any Plan will not result in any material sales charge, surrender fee, interest rate adjustment or similar expense. Neither the execution and delivery of this Agreement nor the consummation of the transactions described herein (either alone or in combination with another event) will, except as otherwise specifically provided in this Agreement or as Previously Disclosed to Buyer, (i) result in any payment to any Person (including any severance compensation or payment, unemployment compensation, "golden parachute" or "change in control" payment, or otherwise) becoming due under any Employment Contract, Plan or agreement to any director, officer, employee or consultant, (ii) increase any benefits otherwise payable under any Employment Contract, Plan or agreement, or (iii) result in any acceleration of the time of payment or vesting of any such benefit.

(g) With respect to each Employment Contract and Plan, no event has occurred, and, to the Knowledge of BBI, there exists no condition or set of circumstances, in connection with which any of the BBI Companies are reasonably likely, directly or indirectly, to be subject to any material Liability under ERISA, the Code or any other applicable Law, except for Liability for benefit claims and funding obligations payable in the Ordinary Course and consistent with the terms of the Employment Contract or Plan.

(h) None of the BBI Companies currently sponsors or maintains, and none of them have sponsored or maintained or been liable with respect to, any employee benefit plan that is or was (i) subject to Section 302 or Title V of ERISA or Section 412 of the Code, (ii) a multiemployer plan as defined in Code Section 414(f) or ERISA Sections 3(37) or 4001(a)(31), (iii) a multiple employer plan within the meaning of Code Section 413(c) or ERISA Sections 4063, 4064 or 4066 or (iv) a multiemployer welfare arrangement within the meaning of ERISA Section 3(40).

(i) Each Plan that is a "group health plan" has been operated at all times in compliance in all material respects with the provisions of ERISA, COBRA, HIPAA and other applicable Law. None of the Employment Contracts or Plans provide for medical, life or other welfare benefits to employees, contractors or directors beyond their retirement or other termination of service (other than coverage mandated by COBRA, the cost of which is fully paid by the current or former employee, contractor, director or their beneficiaries).

(j) To the Knowledge of BBI, (i) no fiduciary of any Plan that is subject to ERISA and is maintained by any of the BBI Companies has any Liability for any breach of fiduciary duty or any other failure to act or comply in connection with the administration or investments of the Assets of any such Plan, (ii) all participant disclosures and elective opportunities required by ERISA, HIPAA, the Code, or other applicable Law, have been timely distributed or made available in a form complying with such Laws, and the BBI Companies have properly documented, maintained, and will retain all records of

such compliance, and (iii) the BBI Companies have properly documented, maintained, and will retain all records of contracts and arrangements with persons and entities providing services to any Plan.

(k) For purposes of the Employment Contracts and Plans, to the Knowledge of BBI each Person has been properly classified and treated as an employee or independent contractor for all applicable purposes.

(l) (i) Since January 1, 2005, each Employment Contract and Plan that is a “deferred compensation plan” within the meaning of Code Section 409A, including each award thereunder, has been operated in good faith compliance in all material respects with the application provisions of Code Section 409A and all regulations and guidance issued thereunder (collectively, “Section 409A”) and, since December 31, 2008, has been in documentary compliance with the applicable provisions of Section 409A; (ii) none of the BBI Companies have been required to report to any government entity or authority any corrections made or Taxes due as a result of a failure to comply with Section 409A or have any indemnity or gross-up obligation for any Taxes, interest or penalty imposed or accelerated under Section 409A; (iii) nothing has occurred, whether by action or failure to act, or is reasonably expected or intended to occur, that would subject an individual having rights under any such Employment Contract or Plan to accelerated Tax as a result of Section 409A or a Tax imposed under Section 409A; and (iv) for any Employment Contract or Plan that is not intended to be subject to Section 409A because it is not a nonqualified deferred compensation plan under Treasury Regulations 1.409A-1(a)(2) through 1.409A-1(a)(5), or due to the application of Treasury Regulations Section 1.409A-1(b), all the conditions required to retain such treatment remain in effect and are not reasonably expected to change so as to subject such Plan to Section 409A. No BBI Stock Option has an exercise price that has been or may be less than the fair market value of the underlying shares of BBI Stock on the date such BBI Stock Option was granted.

(m) To the Knowledge of BBI, no payments or benefits provided for in any of the Employment Contracts or Plans to be or become payable or provided to any officer or employee of any of the BBI Companies as a result of or following the Merger is or will be prohibited by any Regulatory Authority or pursuant to any applicable Law, including the Federal Deposit Insurance Act or any regulation promulgated thereunder.

**3.28. Insurance.** BBI has Previously Disclosed to Buyer a listing of all blanket bond and liability, property and casualty, workers’ compensation and employer liability, life, directors’ and officers’ liability, errors and omissions, or other insurance policies in effect as of September 30, 2018 which are maintained by or insure any of the BBI Companies (the “Policies”) and the coverage amounts of each Policy. The Policies provide coverage in such amounts and against such Liabilities, Losses, casualties or risks as the BBI Companies are required by applicable Law to maintain; and, in the reasonable opinion of management of BBI, the insurance coverage provided under the Policies is reasonable and adequate in all respects for the respective BBI Companies. Each of the Policies is in full force and effect and is valid and enforceable in accordance with its terms (subject to general principles of equity and applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws), and is underwritten by an insurer qualified to issue those policies in Florida. The BBI Companies have complied in all material respects with requirements (including the giving of required notices) under each Policy in order to preserve all material rights thereunder with respect to all matters. None of the BBI Companies is in default under the provisions of, and none of them has received written notice of cancellation or nonrenewal of or any premium increase on, or failed to pay any premium on, any Policy, and there has not been any material inaccuracy in any application for any Policy which would give the insurer a valid defense against paying a claim under that Policy. There are no pending claims with respect to any Policy and, to the Knowledge of BBI, there currently are no circumstances and there has occurred no event that is reasonably likely to form the basis for any such claim.

**3.29. Deposits.** Biscayne is an "insured depository institution" as defined in the Federal Deposit Insurance Act and applicable regulations thereunder. All deposits of Biscayne are insured by the FDIC to the maximum extent permitted by Law; all deposit insurance premiums due from Biscayne to the FDIC have been paid in full in a timely fashion, and no proceedings have been commenced or, to the Knowledge of BBI, are contemplated by the FDIC or otherwise to terminate such insurance. All of the deposits held by Biscayne (including the records and documentation pertaining to such deposits) have been established and are held in compliance in all material respects with (a) all applicable policies, practices and procedures of Biscayne, and (b) all applicable Laws, including Anti-Money Laundering Laws and anti-terrorism or embargoed Persons requirements. Except as Previously Disclosed to Buyer, no deposit of Biscayne is a "brokered deposit" (within the meaning set forth in 12 C.F.R. § 337.6(a)(2)) or is subject to any encumbrance, legal restraint or other legal process (other than garnishments, pledges, set-off rights escrow limitations and similar actions taken or received in the Ordinary Course).

**3.30. Indemnification Obligations.** Except to the extent provided by their respective Articles of Incorporation or Bylaws in effect on the date of this Agreement or in a contract or agreement Previously Disclosed to Buyer, or as otherwise required by applicable Law, none of the BBI Companies have any obligation to indemnify or hold harmless any of their current or former directors, officers, employees or shareholders or any other Person, against or from any Losses or Liabilities incurred in connection with any Litigation, whether civil, criminal, administrative or investigative. No claim, demand or request for payment of indemnification has been made in writing or, to the Knowledge of BBI, is contemplated or threatened, against or with respect to any of the BBI Companies, and no facts or circumstances exist which are reasonably likely to result in such.

**3.31. Agreements Not to Compete.** None of the BBI Companies are bound by any agreement or undertaking not to compete with any other Person in any geographic area or with respect to the sale of any product or service or otherwise, nor any contractual restriction of any kind on the operations, products, services, or territory of any of the BBI Companies or on their solicitation of customers or hiring of employees.

**3.32. Bank Secrecy Act; Patriot Act; Money Laundering.** Each of the BBI Companies is operating in compliance in all material respects with the Bank Secrecy Act, the Patriot Act, the CFTR Act, and any Order, any cautionary, warning or evaluative letter, any finding of violations or prior penalty, and any other administrative actions against or with respect to any of the BBI Companies, by OFAC, the FDIC, or the Florida Office of Financial Regulation, and any other or similar anti-money laundering Law or any related or similar rules, regulations or guidelines issued, administered or enforced by any Regulatory Authority (with all of those Acts, Laws, Orders, rules regulations, guidance, letters, findings and other actions being collectively referred to herein as the "Anti-Money Laundering Laws"), and, to the Knowledge of BBI, there are no conditions, facts or circumstances that could result in the any of the BBI Companies being deemed to be operating in violation of the Anti-Money Laundering Laws. No Litigation by or before any Regulatory Authority or any arbitrator involving any BBI Company with respect to any of such Laws is pending or, to the Knowledge of BBI, threatened. The Board of Directors of Biscayne has adopted and Biscayne has implemented an anti-money laundering program that meets the requirements of Sections 352 and 326 of the Patriot Act, and none of the BBI Companies has received any written notice or communication from any Regulatory Authority to the effect that such program has been deemed ineffective, inadequate or noncompliant or that any of the BBI Companies have violated any of the Anti-Money Laundering Laws in any material respect.

**3.33. CRA and Lending Compliance.** Biscayne is in compliance in all material respects with the applicable provisions of the Community Reinvestment Act of 1977, including the regulations promulgated thereunder (the "CRA"), and with the applicable provisions of all "fair lending."



equal credit opportunity, or other consumer protection Laws applicable to Biscayne's lending activities. Biscayne received a CRA rating of "Satisfactory" in its most recently completed examination. Biscayne has received no material criticism from any Regulatory Authority with respect to discriminatory lending practices. None of the BBI Companies has received, and, to the Knowledge of BBI, there are no facts or circumstances or set of facts or circumstances, or any pending investigations, which could reasonably be expected to cause Biscayne to receive, any written notice or communication from any Regulatory Authority to the effect that Biscayne has not complied with the applicable provisions of the Laws described above, and there are no facts or circumstances or set of facts or circumstances which could reasonably be expected to cause Biscayne's CRA rating to decrease below the "Satisfactory" level or result in Biscayne being subject to material criticism with respect to discriminatory lending practices.

**3.34. Broker-Dealer, Investment Management, and Related Activities.** None of the BBI Companies or, in connection with their activities with respect to any of the BBI Companies, any of their respective directors, officers or employees, is required to be registered, licensed or authorized under the Laws of or administered by any Regulatory Authority as an investment adviser, a broker or dealer, an insurance agency or company, a commodity trading adviser, a commodity pool operator, a futures commission merchant, an introducing broker, a registered representative or associated Person, a representative or solicitor, a counseling officer, an insurance agent, a sales Person or in any similar capacity. Biscayne has not entered into any "third-party brokerage" or "networking" arrangements pursuant to which other financial institutions offer securities, insurance, or similar financial products to Biscayne's customers.

**3.35. Foreign Corrupt Practices.** Since January 1, 2013, no BBI Company, or, to the Knowledge of BBI, any director, officer, agent, employee, affiliate, or other Person acting on behalf of a BBI Company has, in the course of its or their actions for, or on behalf of, any BBI Company (a) used any funds of any BBI Company for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from funds of any BBI Company, (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any similar Law, (d) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business or to obtain special concessions, or to pay for favorable treatment with respect to business previously secured or special concessions previously obtained, for any BBI Company or any of their affiliates, (e) established or maintained any unlawful fund of monies or other Assets of any BBI Company, or (f) made any fraudulent entry on the books or records of any BBI Company.

**3.36. Regulatory Capitalization.** Biscayne is "well-capitalized" and "well managed," as such terms are defined in the rules and regulations promulgated by the FDIC. BBI is "well-capitalized" and "well-managed," as such terms are defined in the rules and regulations promulgated by the Federal Reserve Board.

**3.37. Office of Foreign Asset Control.** None of the BBI Companies or, to the Knowledge of BBI, any director, officer, agent, employee, affiliate or other Person acting on behalf of any of the BBI Companies, is (a) engaged in any services (including financial services), transfers of goods, software, or technology or any other business activity related to (i) any country (each, a "Sanctioned Country") subject to sanctions administered by the OFAC, (ii) the government of any Sanctioned Country, (iii) any Person located in, resident in, formed under the Laws of, or owned or controlled by the government of, any Sanctioned Country, or (iv) any Person made the subject of any sanctions administered or enforced by the U.S. Government, including, without limitation, OFAC's list of Specially Designated Nationals (collectively, "Sanctions"), (b) engaged in any transfers of goods, technologies or services (including financial services) that may assist the governments of Sanctioned

Countries or facilitate money laundering or other activities proscribed by Law. (c) is a Person currently the subject of any Sanctions, or (d) located, organized or resident in any Sanctioned Country.

**3.38. Trust Business; Administration of Fiduciary Accounts.** None of the BBI Companies has offered or engaged in providing any individual or corporate trust services or administers any accounts for which it acts as a fiduciary, including any accounts in which it serves as a trustee, agent, custodian, personal representative, guardian, conservator or investment advisor.

**3.39. Keefe, Bruyette & Woods Fairness Opinion.** BBI's Board of Directors has received an opinion (which, if initially rendered orally, has been or will be confirmed by a written opinion, dated the same date) from Keefe, Bruyette & Woods, to the effect that, as of the date thereof, and based upon and subject to the factors, assumptions and limitations set forth therein, the Per Share Merger Consideration is fair, from a financial point of view, to the holders of BBI Common Stock.

**3.40. Obstacles to Regulatory Approval.** To the Knowledge of BBI, as of the date of this Agreement, there exists no fact or condition (including Biscayne's record of compliance with any of the Laws, rules, regulations or guidelines referenced in Paragraphs 3.32, 3.33, 3.35 or 3.37 above) pertaining to any of the BBI Companies or their business or operations that may reasonably be expected to prevent or materially impede or delay the BBI Companies or Buyer from obtaining any Required Regulatory Approval.

#### **ARTICLE IV—REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as otherwise specifically described in this Agreement or as Previously Disclosed to BBI, Buyer hereby makes the following representations and warranties to BBI.

##### **4.01. Organization; Standing; Power.**

(a) Buyer is duly organized and incorporated, validly existing and in good standing as a bank under the Laws of North Carolina;

(b) Merger Sub is duly organized and incorporated, validly existing and in good standing as a corporation under the Laws of North Carolina;

(c) Buyer and Merger Sub each has all requisite power and authority (corporate and other) to own its properties and conduct its business as it now is being conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which it owns, leases or otherwise operates properties of a character, or it transacts business of a nature, that makes such qualification necessary, except where failure to qualify in a particular jurisdiction cannot reasonably be expected to cause Buyer to be unable to consummate the Merger.

**4.02. Authorization and Validity of Agreement.** This Agreement has been duly and validly approved by Buyer's Board of Directors and the Board of Directors of Merger Sub and has been executed and delivered on Buyer's and Merger Sub's behalf by their officers thereunto duly authorized. Subject only to receipt of Required Regulatory Approvals, (a) Buyer and Merger Sub each has the corporate power and authority to execute and deliver this Agreement and to perform its respective obligations and agreements and carry out the transactions described herein, (b) all corporate proceedings required to be taken to authorize Buyer and Merger Sub to enter into this Agreement and to perform its respective obligations and agreements and carry out the transactions described herein have been duly and properly taken, and (c) this Agreement constitutes the valid and binding agreement of each of Buyer and Merger Sub, respectively, and is enforceable in accordance with its terms (except to the extent

enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, (ii) legal and equitable limitations on the availability of injunctive relief, specific performance and other equitable remedies, and (iii) general principles of equity and applicable Laws or court decisions limiting the enforceability of indemnification provisions).

**4.03. Validity of Transactions; Absence of Required Consents or Waivers.** Subject to receipt of Required Regulatory Approvals, neither the execution and delivery of this Agreement, nor the consummation of the transactions described herein, nor compliance by Buyer and Merger Sub with any of their respective obligations or agreements contained herein, will conflict with or result in a breach of the terms and conditions of, or constitute a default or violation under any provision of, Buyer's or Merger Sub's respective Articles of Incorporation or Bylaws, or, except where the same could not reasonably be expected to cause Buyer or Merger Sub to be unable to consummate the Merger, (a) conflict with or result in a breach of the terms and conditions of, or constitute a default or violation under any material contract, agreement, lease, mortgage, note, bond, indenture, license or obligation or understanding (oral or written) to which either of them is bound or by which either of them, or their businesses, capital stock or Assets may be affected, (b) result in the creation or imposition of any material lien, claim, interest, charge, restriction or encumbrance upon any of Buyer's or Merger Sub's Assets, (c) violate any applicable Law or any order, writ, injunction or decree of any court, administrative or regulatory agency or governmental body, or (d) result in the acceleration of any material obligation or indebtedness of Buyer or Merger Sub.

No consents, approvals or waivers are required to be obtained from any Person in connection with Buyer's and Merger Sub's execution and delivery of this Agreement, or the performance of their respective obligations or agreements or the consummation of the transactions described herein, except for Required Regulatory Approvals.

**4.04. Insurance of Deposits.** All deposits of Buyer are insured by the FDIC to the maximum extent permitted by Law, all deposit insurance premiums due from Buyer to the FDIC have been paid in full in a timely fashion, and no proceedings have been commenced or, to the Knowledge of Buyer, are contemplated by the FDIC or otherwise to terminate such insurance.

**4.05. Financing.** Buyer has sufficient cash reserves, or has access to sufficient cash, with which to pay the Aggregate Merger Consideration described herein without the need for any additional cash from an outside source.

**4.06. Litigation.** There is no Litigation or, to the Knowledge of Buyer, any facts or circumstances which reasonably could be expected to result in any Litigation, including any such action by any Regulatory Authority, which currently exists or is ongoing, pending or, to the Knowledge of Buyer, threatened against Buyer that can reasonably be expected to cause Buyer to be unable to consummate the Merger.

**4.07. Consolidated Financial Statements.** The audited consolidated financial statements of BancShares included in BancShares' Annual Report on Form 10-K for the year ended December 31, 2017, and the unaudited consolidated financial statements of BancShares for the nine months ended September 30, 2018 included in BancShares' Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, each as filed by BancShares with the SEC, (i) comply as to form in all material respects with the applicable published rules and regulations of Regulatory Authorities with respect thereto, (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except as indicated in such statements or in the notes thereto, (iii) have been prepared from and are in accordance with BancShares' and Buyer's books and records, and

(iv) present fairly in all material respects BancShares' consolidated balance sheets and statements of income and comprehensive income, changes in shareholders' equity and changes in cash flows, as of the dates indicated and for the periods specified therein (except to the extent that the unaudited financial statements for the nine months ended September 30, 2018 are subject to normal and recurring year-end adjustments that are not expected to be material in amount or effect, except as indicated in such interim financial statements or notes thereto). BancShares' audited financial statements for the year ended December 31, 2017 have been audited by Dixon Hughes Goodman LLP which serves as BancShares' independent registered public accounting firm, as evidenced by that firm's reports included therein.

**4.08. Bank Secrecy Act; Patriot Act; Money Laundering.** Buyer is operating in compliance in all material respects with Anti-Money Laundering Laws. No Litigation by or before any Regulatory Authority or any arbitrator involving Buyer with respect to any of such Laws is pending or, to the Knowledge of Buyer, threatened. The Board of Directors of Buyer has adopted and Buyer has implemented an anti-money laundering program that meets the requirements of Sections 352 and 326 of the Patriot Act, and Buyer has not received any written notice or communication from any Regulatory Authority to the effect that such program has been deemed ineffective, inadequate or noncompliant or that either of them have violated any of the Anti-Money Laundering Laws in any material respect.

**4.09. CRA and Lending Compliance.** Buyer is in compliance in all material respects with the applicable provisions of the CRA, and with the applicable provisions of all "fair lending," equal credit opportunity, or other consumer protection Laws applicable to Buyer's lending activities. Buyer received a CRA rating of "Satisfactory" in its most recently completed examination. Buyer has not received, and, to the Knowledge of Buyer, there are no facts or circumstances or set of facts or circumstances which could reasonably be expected to cause Buyer to receive, any written notice or communication from any Regulatory Authority to the effect that Buyer has not complied with the applicable provisions of the Laws described above, and there are no facts or circumstances or set of facts or circumstances which could reasonably be expected to cause Buyer's CRA rating to decrease below the "Satisfactory" level.

**4.10. Obstacles to Regulatory Approval.** To the Knowledge of Buyer, as of the date of this Agreement no fact or condition pertaining to Buyer or its business or operations exists that may reasonably be expected to prevent or materially impede or delay Buyer from obtaining all Required Regulatory Approvals.

## **ARTICLE V—COVENANTS OF BBI AND BISCAYNE**

BBI and Biscayne each covenants and agrees with Buyer as described in the following Paragraphs.

### **5.01. Affirmative Covenants.**

(a) **BBI Shareholders' Meeting.** BBI shall cause a meeting of its shareholders (the "BBI Shareholders' Meeting") to be duly called and held as soon as practicable after the date of this Agreement for the purpose of voting by the holders of BBI Common Stock on the approval of (i) this Agreement and the Merger and Subsequent Transactions, (ii) a proposal to authorize BBI's Board of Directors to adjourn the BBI Shareholders' Meeting, if necessary, to permit the solicitation of additional appointments of proxies if the number of shares of BBI Common Stock represented, in person or by appointments of proxies, are insufficient to constitute a quorum, or if the number of shares of BBI Common Stock represented by appointments of proxies to be voted in favor of approval of the Agreement and the Merger are insufficient to approve the same under applicable Law and BBI's Articles of Incorporation and Bylaws, and (iii) any other matter required by applicable Law to be voted on by

shareholders in conjunction with the transactions described herein. In connection with the call and conduct of, and all other matters relating to, the BBI Shareholders' Meeting (including the solicitation of appointments of proxies), BBI will comply in all material respects with all provisions of applicable Law and with its Articles of Incorporation and Bylaws. BBI agrees to use Commercially Reasonable Efforts to hold the BBI Shareholders' Meeting on or before 75 days following the date of this Agreement. If, at the BBI Shareholders' Meeting, the shares of BBI Common Stock represented, in person or by appointments of proxies, are insufficient to constitute a quorum, or if the number of shares of BBI Common Stock represented by appointments of proxies to be voted in favor of approval of the Agreement and the Merger are insufficient to approve the same under applicable Law and BBI's Articles of Incorporation and Bylaws, BBI will adjourn the meeting one or more times to permit the continued solicitation of appointments of proxies for the additional shares needed for a quorum or such approval.

(b) ***BBI Proxy Statement.*** BBI will solicit appointments of proxies from the holders of BBI Common Stock for use at the BBI Shareholders' Meeting and, in connection with that solicitation, will (i) prepare and distribute to all its shareholders proxy solicitation materials (a "Proxy Statement") that, in all material respects, shall be in such form, and contain or be accompanied by such information regarding the BBI Shareholders' Meeting, this Agreement, the parties hereto, the Merger and Subsequent Transactions, and other matters described herein, as is required by all applicable Laws, and otherwise that a reasonable shareholder of BBI would consider material in connection with the meeting. BBI will provide a copy of the proposed Proxy Statement in preliminary form to Buyer for its review and comment prior to its being finalized, and it will provide a final copy to Buyer for its review and comment prior to its being printed and distributed to BBI's shareholders.

BBI will mail the Proxy Statement to its shareholders on a date mutually agreed upon by BBI and Buyer within the timeframe required by BBI's bylaws, but in no event less than 30 days prior to the scheduled date of the BBI Shareholders' Meeting.

(c) ***Efforts to Obtain Approval; Board Recommendation.*** BBI and Biscayne and their respective directors will in good faith promote the Merger to BBI's shareholders, encourage them to vote or authorize the proxies designated by BBI to vote for approval of this Agreement and the Merger and Subsequent Transactions, and use its and their Commercially Reasonable Efforts to obtain the approval of BBI's shareholders required under applicable Law and BBI's Articles of Incorporation in order to consummate the Merger and Subsequent Transactions. BBI's Board of Directors will recommend that BBI's shareholders vote, or instruct the proxies to vote, their shares of BBI Common Stock at the BBI Shareholders' Meeting in favor of approval of this Agreement and the Merger and Subsequent Transactions, and the Proxy Statement distributed to BBI's shareholders in connection with the BBI Shareholders' Meeting will state that BBI's Board of Directors considers the Merger to be advisable and in the best interests of BBI and its shareholders and that the Board of Directors recommends that holders of BBI Common Stock vote for its approval.

Notwithstanding the foregoing, if BBI's Board of Directors reasonably believes in good faith, after consultation with and receipt of the advice of its outside legal counsel and financial advisers, that such a recommendation would violate the directors' duties or obligations as such to BBI or to its shareholders under applicable Law as a result of BBI's receipt of a "Superior Proposal" (as that term is defined in Paragraph 9.02(b)(v) below), then the Board of Directors may (i) withdraw, qualify or revise its recommendation and submit the Agreement to shareholders at the BBI Shareholders' Meeting without recommendation and, to the extent required by Law, communicate the basis for its lack of a recommendation to the shareholders in the Proxy Statement or any appropriate amendment or supplement thereto (subject, however, to Buyer's rights under Paragraph 9.02(a)), or (ii) following a termination of this Agreement by BBI in the manner provided in Paragraph 9.02(b)(v), the Board of Directors may

withdraw its recommendation and not submit this Agreement and the Merger and Subsequent Transactions to a vote of BBI's shareholders.

(d) ***Conduct of Business Prior to Effective Time.*** The parties agree that the operation of the BBI Companies until the Effective Time is the responsibility of the respective Boards of Directors and officers of the BBI Companies. However, in connection with such operations, BBI and Biscayne each agrees that, following the date of this Agreement and to and including the Effective Time, and except as otherwise provided herein or expressly agreed to in writing by Buyer's Chief Financial Officer or Chief Accounting Officer, BBI and Biscayne each will carry on its business in and only in the Ordinary Course and, to the extent consistent in all material respects with such business and within its ability to do so, BBI and Biscayne each agrees that it, and their respective subsidiaries, will use Commercially Reasonable Efforts to:

(i) preserve intact its present business organization, and preserve its relationships with customers, depositors, borrowers, employees, creditors, correspondents, suppliers and others having business relationships with it;

(ii) maintain all of its properties and equipment in customary repair, order and condition, ordinary wear and tear excepted;

(iii) maintain its books of account and records in the usual, regular and ordinary manner in accordance with applicable Law and sound business practices applied on a consistent basis;

(iv) perform its agreements and comply with its obligations under all contracts and agreements to which it is a party, and give prompt written notice to Buyer of any claim or receipt of notice from any other party thereto of any alleged material default or noncompliance thereunder by any of the BBI Companies;

(v) comply in all material respects with all Laws applicable to it, to its Assets or employees, and to the conduct of its business;

(vi) not change its existing Loan underwriting practices, procedures, guidelines or policies in any material respect except as may be required by Law or Regulatory Authorities or as otherwise provided in this Agreement;

(vii) continue to maintain federal deposit insurance for Biscayne's deposits as described in Paragraph 3.29;

(viii) continue to maintain in force the Policies described in Paragraph 3.28 and not cancel, terminate, fail to renew, or modify any Policy, or allow any Policy to be cancelled or terminated, unless the cancelled or terminated Policy is replaced with a bond or policy providing coverage, or unless the Policy as modified provides coverage, that is substantially equivalent to the Policy that is replaced or modified; and

(ix) promptly notify Buyer of any actual or, to the Knowledge of BBI, threatened Litigation by or against any of them, any of their respective officers or directors in their capacities as such, or any other Person whom any of the BBI Companies is obligated to indemnify, or any claim against any of the BBI Companies for indemnification under their Articles of Incorporation or Bylaws or any other agreement or arrangement, together with a

description of the circumstances surrounding any such actual or threatened Litigation, its then-present status and management's evaluation of such claim or litigation.

(e) ***Periodic Financial and Other Information.*** Subject to Paragraph 11.14, following the date of this Agreement and from time to time as indicated below, to and including the Effective Time, BBI and Biscayne will, within five Business Days following each meeting of the Board of Directors, or of the executive committee of the Board of Directors, of either BBI or Biscayne, deliver to Buyer a copy of all written materials provided to their directors at or in advance of such Board meeting, including copies of all information and analyses provided to directors regarding their respective financial conditions, results of operations, capital, liquidity, credit metrics and operations, and including meeting minutes (following their approval by the Board of Directors) and credit memoranda; *provided*, that BBI and Biscayne shall not be obligated to provide to Buyer copies of any such materials pertaining to Buyer or the transactions contemplated by this Agreement or any materials with respect to which BBI or Biscayne have been advised by counsel that such disclosure to Buyer may violate a confidentiality obligation or any Law or may result in a waiver of attorney-client privilege. In the event that their Boards of Directors do not meet during a month, then BBI and Biscayne will provide comparable information to Buyer within ten days following the end of that month.

Except to the extent that substantially the same information is included in the information provided to their directors and delivered to Buyer as provided above, BBI and Biscayne also will provide the following information at the same time information is provided pursuant to the preceding Paragraph:

(i) copies, each as of that month-end, of BBI's (A) unaudited year-to-date consolidated income statement, (B) unaudited consolidated statement of condition, and (C) unaudited year-to-date statement of shareholders' equity roll-forward (including share count) since the last audited period;

(ii) a copy of their month-end securities portfolio inventory reports showing, at a minimum, each security held by the BBI Companies at that month-end, and the CUSIP number, book value and month-end value of (whether market or economic, depending on the type of security, as routinely presented by the BBI Companies in their monthly reports), and unrealized gain or loss related to, each such security, and all securities purchased and sold, and gains and losses realized, during that month;

(iii) a copy of: (A) interest rate risk reports, and (B) BBI's and Biscayne's management's analysis of (1) their contingency funding plan and (2) quarterly liquidity;

(iv) (A) a listing of the aggregate dollar volume and number of Loans and Loan commitments made or issued by Biscayne during that month, and (B) BBI's and Biscayne's management's analysis of their Loan Loss Reserves;

(v) a listing showing (A) each new Loan made to a non-resident alien or foreign Person during that month (together with an indication of country of origin), (B) each restricted deposit account opened or pledged in connection with each such new Loan, and (C) each restricted deposit account released during that month, together with the current balance of the Loan related to each released deposit account and an explanation of the reason each account was released;

(vi) lists of:

- (A) Loans that are past due as to principal or interest for more than 30 days;
- (B) Loans in nonaccrual status;
- (C) any new restructured Loans, including original terms, restructured terms and status;
- (D) classified, potential problem or "watch list" Loans, together with the outstanding balance and amount specifically allocated to the Loan Loss Reserve for each such Loan;
- (E) all Loans and other losses charged off during that month;
- (F) additions during the applicable month to foreclosed real property or other real estate owned and all repossessed personal property;

(vii) lists of:

- (A) Loans held for sale, together with an aging schedule indicating the number of days each Loan has been held for sale;
- (B) Sold Loans sold during the month, broken down by investor;
- (C) Sold Loans that have been repurchased from investors or other purchasers during the month; and

(viii) promptly following Buyer's request, provide to Buyer copies of such other information and/or reports about the BBI Companies' financial condition, results of operations, prospects, businesses, Assets, Loan portfolio, investments, properties, employees or operations as BBI has historically collected or produced or can produce in the Ordinary Course and as Buyer reasonably shall request from time to time.

(f) *Accruals for Expenses and Other Accounting Matters.* BBI and Biscayne will make such appropriate accounting entries in their books and records and take such other actions as Buyer deems to be required by GAAP, or which Buyer otherwise reasonably deems to be necessary, appropriate or desirable in anticipation of completion of the Merger and which are not in violation of GAAP or applicable Law, including additional provisions to Biscayne's Loan Loss Reserve or accruals or the creation of reserves for compensation, employee benefit and transaction-related expenses; *provided*, that notwithstanding any provision of this Agreement to the contrary, (i) except as otherwise agreed to by BBI and Buyer, BBI and Biscayne shall not be required to make any such accounting entries until immediately prior to the Closing Date and only following receipt of written confirmation from Buyer that it is not aware of any fact or circumstance that would prevent completion of the Merger, and (ii) any such accounting entries made by BBI or Biscayne at the direction of Buyer and related to Buyer's own accounting purposes or convenience (as opposed to entries relating to events, developments, changes or circumstances in BBI's or Biscayne's business or operations that should or are required to be made by them under GAAP or applicable banking regulations or otherwise in the normal course of their business) may not, in and of themselves, either individually or in the aggregate with all other such entries, be used to evidence a BBI Material Change.



(g) ***Loan Loss Reserve and Loan Charge-Offs.*** Following the date of this Agreement, and prior to the Closing Date, BBI and Biscayne will make such appropriate accounting entries in their books and records and take such other actions as are necessary or appropriate to:

(i) charge-off any Loans on Biscayne's books, or any portions thereof, that they consider to be losses, or that should or are required to be charged off pursuant to applicable banking regulations, GAAP, or otherwise in accordance with their Loan administration and charge-off policies and procedures; and

(ii) maintain Biscayne's Loan Loss Reserve in a manner, and provide funds to Biscayne's Loan Loss Reserve in amounts consistent with their past practices and as required by applicable banking regulations, GAAP, and Biscayne's Loan policies and procedures.

(h) ***Consents to Assignment of Contracts and Leases.*** With respect to each Material Contract to which any of the BBI Companies is a party (including each of the Lease Agreements) and with respect to which Buyer provides BBI written notice after the date hereof of Buyer's reasonable belief that such Material Contract requires the consent of any other contracting party in connection with or as a result of the Merger or Subsequent Transactions and/or with respect to which Buyer desires to receive an estoppel certificate from the other contracting party, BBI and Biscayne will use their Commercially Reasonable Efforts to obtain and deliver to Buyer, prior to the Closing Date, the written consent and/or estoppel certificate of that other party in a form and containing such terms as shall be reasonably satisfactory to Buyer.

(i) ***Access and Continuing Due Diligence Investigation.*** BBI and Biscayne each agrees that, following the date of this Agreement and to and including the Effective Time, and subject to applicable Laws and contractual requirements governing the exchange of HPI or other information and assertions of attorney-client or attorney work product privileges, it will provide Buyer and its employees, accountants, legal counsel, environmental or other consultants, or other representatives and agents access to all books, records, files (including credit files and Loan and Sold Loan documentation and records) and other information (whether maintained electronically or otherwise) of each of the BBI Companies, and to all their properties and facilities, employees, accountants, legal counsel, environmental or other consultants, or other representatives or agents (including their operations and data processing personnel and systems), as Buyer shall reasonably consider to be necessary or appropriate for the purpose of conducting ongoing reviews and investigations of the Assets, Liabilities, operations, compliance and business affairs of the BBI Companies and the BBI Real Property, and preparing for consummation of the Merger and the combining of the operations, systems and employees of Buyer, BBI and Biscayne, including reviews and investigations of the BBI Companies operating and compliance policies, procedures and controls, information needed for inclusion in or the preparation of applications for Required Regulatory Approvals, for purposes of determining the accuracy of BBI's and Biscayne's representations and warranties in this Agreement and their compliance with their covenants in this Agreement, and for any other reason. Any investigations or reviews conducted by or on behalf of Buyer as described above shall be performed in such a manner as will not interfere unreasonably with BBI's and Biscayne's normal operations or with their relationship with their customers or employees, and shall be conducted in accordance with procedures established by the parties, each acting reasonably.

As part of Buyer's continuing review and investigation, following the date of this Agreement and prior to the Closing, Buyer and its consultants may conduct an investigation, assessment and analysis of Biscayne's policies, procedures and controls with respect to, and its compliance with, requirements under the Anti-Money Laundering Laws (the "BSA/AML Assessment").

(j) **Pricing of Deposits and Loans.** Following the date of this Agreement and to and including the Effective Time, and except as otherwise provided in this Agreement, BBI and Biscayne will make pricing decisions with respect to deposit accounts and Loans in a manner consistent with their past practices based on competition and prevailing market rates in their banking markets.

(k) **Preparations for Conversion.** Following the date of this Agreement and to and including the Effective Time, BBI and Biscayne will cooperate with Buyer and take such actions as Buyer shall reasonably request in order to prepare for and permit the conversion of Biscayne's banking operations, customer accounts and data, and data systems to Buyer's systems as promptly as possible following the Merger; *provided*, that BBI shall not be required to take actions that would, in the reasonable judgment of BBI's management, prevent management of BBI and Biscayne from conducting their ongoing banking operations in the Ordinary Course before the Effective Time.

(l) **Notice of Exercise of Dissenters' Rights.** Following the date of this Agreement and to and including the Effective Time, BBI will, within three Business Days, notify Buyer in writing of and provide to it such further information as it shall reasonably request regarding (i) any notice received by BBI regarding any shareholder's intent to exercise Dissenters' Rights, or (ii) any written notice or communication received by BBI from any shareholder regarding the shareholder's opposition to or intent to vote against the Merger. Unless required by applicable Law, BBI will not, except with the prior written consent of Buyer (which consent shall not be unreasonably withheld), make any payment to any shareholder who exercises Dissenters' Rights or otherwise settle or offer to settle any such demands.

(m) **Approval, Execution and Delivery of Subsequent Transaction Documents.** Promptly following Buyer's request, BBI and Biscayne shall obtain, and provide to Buyer evidence of, the approvals of their respective Boards of Directors of, and shall execute and deliver to Buyer, Agreements and Plans of Merger in the forms of Appendices B and C hereto, and such other transaction documents as Buyer shall deem necessary or appropriate in order to effect the Subsequent Transactions. The Subsequent Transactions shall be structured in such a manner, and the approvals and related transaction documents shall be in such form, as Buyer shall specify, and the approvals and transaction documents shall include any such approvals and documents as are required to be included with applications for the Required Regulatory Approvals; *provided*, that completion of the Subsequent Transactions provided for in those transaction documents in each case shall be conditioned upon completion of the Merger.

(n) **Section 280G Matters.** Prior to the Closing Date, BBI and Biscayne shall take all such steps as shall be required to ensure to Buyer's reasonable satisfaction that no amount paid or payable (whether in cash, in property, or in the form of benefits) by the BBI Companies, or by Buyer on behalf of any of the BBI Companies, in connection with the Merger or other transactions described herein (either solely as a result thereof or as a result of such transactions in conjunction with any other event), including any items or amounts Previously Disclosed to Buyer, will be an "excess parachute payment" within the meaning of Section 280G of the Internal Revenue Code or will prevent the condition to Buyer's obligations under Section 8.03(h) from being satisfied. In connection with any method proposed to eliminate any excess parachute payment, BBI and Biscayne will provide to Buyer, in advance of its use, a copy of, and permit it to comment on, any agreement or amendment to an agreement, waiver, disclosure to shareholders, or other documentation related thereto, and any such documentation shall be in form and content that is reasonably satisfactory to Buyer.

**5.02. Negative Covenants.** Except as expressly contemplated or permitted by this Agreement, and except to the extent required by Law or any Regulatory Authority, following the date of this Agreement, and to and including the Effective Time, without the prior written consent and

authorization of Buyer's Chief Financial Officer or Chief Accounting Officer, which consent shall not be unreasonably withheld, conditioned or delayed, the BBI Companies shall not take any of the actions prohibited by this Paragraph 5.02. Any request by a BBI Company for Buyer's prior consent and authorization to take any such prohibited action shall be in writing and be submitted to Buyer's Chief Financial Officer or Chief Accounting Officer and shall describe the prohibited action proposed to be taken, and the BBI Company shall provide to Buyer such additional information about the proposed action as Buyer shall request. If Buyer shall not have disapproved of such a written request by a BBI Company by the close of its business on the third Business Day following the actual receipt by Buyer's Chief Financial Officer or Chief Accounting Officer of such request, together with such additional information as Buyer shall request, that request shall be deemed to be approved by Buyer):

(a) *Amendments to Articles of Incorporation or Bylaws.* None of the BBI Companies will amend their Articles of Incorporation, Bylaws or other organizational documents.

(b) *Change in Capitalization.* None of the BBI Companies will make any change in their authorized capital stock, create any other or additional authorized capital stock or other securities, or reclassify, combine, subdivide or split any shares of their capital stock or other securities.

(c) *Sale or Issuance of Capital Stock, Equity Interests or Other Securities.* None of the BBI Companies will sell or issue any additional shares of capital stock or equity interests in, or other securities of, such company, including any capital notes, debentures or other debt securities or any securities convertible into capital stock or other securities, or enter into any agreement or understanding with respect to any such action; *provided*, that, following the date of this Agreement, BBI may issue:

(i) up to an aggregate of 117,885 shares of BBI Common Stock upon the exercise in accordance with their terms of BBI Stock Options outstanding on the date of this Agreement;

(ii) up to an aggregate of 27,197 shares of BBI Common Stock upon the vesting in accordance with their terms of BBI Restricted Stock Grants outstanding on the date of this Agreement; and

(iii) up to an aggregate of 1,250 shares of BBI Common Stock for each calendar month, commencing October 1, 2018 and until the Closing, to BBI's and Biscayne's non-employee directors, in consideration for their service as such, pursuant to Biscayne's 2018/2019 board compensation schedule as approved by the Compensation Committee of Biscayne's Board of Directors at a meeting on November 16, 2017 and reflected in the minutes of that meeting.

(d) *Purchase or Redemption of Capital Stock, Equity Interests or Other Securities.* None of the BBI Companies will purchase, redeem, retire or otherwise acquire any shares of capital stock or equity interests in, or other securities of, such company, including any capital notes, debentures or other debt securities or any securities convertible into capital stock or other securities, or enter into any agreement or understanding with respect to any such action.

(e) *Options, Warrants and Rights.* None of the BBI Companies will grant or issue any options, warrants, calls, puts, awards or other rights of any kind relating to the sale, purchase, issuance, redemption or conversion of shares of capital stock or equity interests in, or other securities of, such company, or enter into any agreement or understanding with respect to any such action. Specifically, and without limiting the generality of the preceding sentence, BBI will not grant any stock options or

other share-based or restricted stock awards (including any performance shares or stock appreciation rights) under the BBI Stock Plan or any other equity-based compensation plan or arrangement or otherwise.

(f) ***Dividends and Distributions.*** BBI will not declare or pay any dividend on the outstanding shares of BBI Common Stock, whether in cash or in additional shares of capital stock or other securities, or make any other distributions on or in respect of any shares of its capital stock or otherwise to its shareholders.

(g) ***Employment, Benefit or Retirement Agreements or Plans.*** Except as required by Law or this Agreement, none of the BBI Companies will (i) enter into, become bound by, amend or modify any oral or written contract, agreement, commitment or other arrangement for the employment, retention, compensation or indemnification of any current or former director, officer, employee or consultant which is not immediately terminable by it without cost or other Liability on no more than 30 days' notice; (ii) adopt, enter into, or become bound by any new or additional, or modify, amend or renew any existing, profit-sharing, bonus, incentive, change in control or "golden parachute," stock option, stock purchase, pension, deferred compensation, retirement, severance, insurance (including hospitalization, life or other, except for renewals of existing group employee insurance policies in the Ordinary Course), paid leave (including sick leave, vacation leave or other) or similar contract, agreement, commitment, understanding, plan or arrangement (whether formal or informal) with respect to or which provides for compensation or benefits for any of its or their current or former directors, officers, employees or consultants; or (iii) enter into, become bound by or amend any contract with or commitment to any labor or trade union or association or any collective bargaining group.

(h) ***Increase in or Payment of Certain Compensation.*** None of the BBI Companies will increase the compensation or benefits of, or pay any bonus, severance or other special or additional compensation to, any of its or their current or former directors, officers, employees or consultants; *provided*, that notwithstanding anything contained herein to the contrary, prior to the Effective Time Biscayne may review and make routine merit increases in the salaries of its employees, provided that the times and amounts of those reviews and salary increases are consistent with Biscayne's past practices with respect to salary increases and its salary administration and review policies and procedures in effect prior to January 1, 2018, and *provided*, further, that Biscayne may (i) pay year-end 2018 cash incentive compensation awards to its officers and employees for performance during 2018 (which, in the aggregate, shall not exceed \$2,200,000), (ii) prior to the Effective Time, pay interim incentive compensation awards to its officers and employees for performance during 2019 (which, in the aggregate, shall not exceed a *pro rata* portion of \$2,200,000 based on the number of days of 2019 elapsed between December 31, 2018 and the Closing Date), and (iii) may provide for salary increases, effective January 1, 2019, to certain officers and employees as Previously Disclosed to Buyer.

(i) ***Accounting and Tax Practices; Independent Accountants.*** None of the BBI Companies will make any changes in its accounting or tax methods, policies, practices or procedures or in depreciation or amortization policies, schedules or rates heretofore applied except as required by GAAP or applicable Law or as recommended by its independent public accountants, and BBI will not change its independent public accountants.

(j) ***Acquisitions; Additional Branch Offices.*** None of the BBI Companies will, directly or indirectly (i) acquire (whether by merger or otherwise) any other Person or any branch office or all or any significant part of the Assets or Liabilities of any other Person, other than in connection with the foreclosure or other enforcement in the Ordinary Course of a lien held to secure a Loan, (ii) open any new branch office, or (iii) enter into or become bound by any contract, agreement,

commitment or letter of intent relating to, or otherwise take or agree to take any action in furtherance of, any such transaction or the opening of a new branch office.

(k) *Changes in Business Practices.* Except as shall be required by their respective Regulatory Authorities, or otherwise by applicable Law or this Agreement, none of the BBI Companies will change in any material respect (i) their current business practices, the nature of their businesses, or the manner in which they conduct their businesses, or discontinue any material portion or line of their businesses, (ii) Biscayne's current lending and Loan administration practices, guidelines, policies and procedures, or (iii) Biscayne's current deposit, overdraft or asset-liability management policies and procedures (including any changes in the pricing of or interest rates paid on deposits), or take any actions designed to materially increase or decrease the aggregate level of Biscayne's deposits, or any category of its deposits, from the levels as of the date of this Agreement, other than changes that are consistent with the BBI Companies' asset-liability management policies and based on competition, market rates or changes in applicable Law.

(l) *Exclusive Agreement.*

(i) None of the BBI Companies, nor any of their respective directors (individually or acting as members of BBI's or Biscayne's Board of Directors), officers, employees, advisers or other representatives will, directly, or indirectly through any Person, (A) initiate, solicit, facilitate or encourage the initiation or procurement of, or take any action, including by way of furnishing information, to facilitate the initiation or procurement of, any Acquisition Proposal (as defined below) or to generate inquiries, discussions or negotiations with respect to the making of any Acquisition Proposal, (B) continue or otherwise participate in any discussions or negotiations with, furnish or disclose any information relating to any of the BBI Companies to, or otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any Person that is contemplating or seeking to make, or has made, an Acquisition Proposal, (C) terminate any provision of any confidentiality or standstill agreement relating to or entered into in connection with any Acquisition Proposal, (D) except to the extent required by Law, disclose to any Person who could reasonably be perceived as a possible source of an Acquisition Proposal any information not customarily disclosed to the public concerning any of the BBI Companies or their businesses, or afford to any such Person access to the properties, facilities, books or records of any of the BBI Companies not ordinarily afforded to members of the public generally, (E) approve, endorse or recommend, enter into or become bound by, or otherwise take or agree to any action in furtherance of, any Acquisition Agreement, or (F) authorize, permit or direct any other Person to represent it or them in connection with, or to take on its or their behalf, any action described above, or cooperate with any other Person in connection with any such action.

"*Acquisition Proposal*" means any inquiry, proposal or offer by any Person with respect to: (A) any merger, consolidation, share exchange, business combination, or similar transaction involving BBI or Biscayne (other than the transactions described in this Agreement); (B) any sale, lease (as lessor), exchange, mortgage, pledge, transfer or other disposition of any branch office of Biscayne or of twenty-five (25%) or more of BBI's consolidated Assets to any other Person in a single transaction or series of related transactions; (C) any tender offer or exchange offer for twenty-five (25%) or more of the outstanding shares of any class of BBI Stock or Biscayne Stock; or (D) the making of any public announcement in connection with any of the above.

"*Acquisition Agreement*" means any letter of intent, agreement in principle, definitive agreement or similar agreement, in any case in writing, that relates to or provides for any transaction that is described in or contemplated by the term Acquisition Proposal, as defined above.

(ii) Notwithstanding the foregoing, if at any time after the date hereof, but before approval of this Agreement by BBI's shareholders, (A) any of the BBI Companies receives an unsolicited written Acquisition Proposal that BBI's Board of Directors believes in good faith to be *bona fide*, (B) such Acquisition Proposal was not the result of or received following a violation of this Paragraph 5.02(l), (C) BBI's Board of Directors determines in good faith, and after consultation with its outside legal counsel and financial adviser, that the Acquisition Proposal constitutes or is reasonably likely to lead to a Superior Proposal (as defined in Paragraph 9.02(b)(v) below), and (D) BBI's Board of Directors determines in good faith, and after consultation with its outside legal counsel, that the failure to take the actions referred to in clauses (x) and or (y) below would be reasonably likely to violate its fiduciary duties under applicable Law, then BBI may (and may authorize its representatives to) (x) furnish nonpublic information regarding the BBI Companies to the Person making the Acquisition Proposal (and its representatives) pursuant to a customary confidentiality agreement containing terms substantially similar to, and no less favorable to BBI than, those contained in Paragraph 7.04 of this Agreement; *provided*, that any nonpublic information provided to any such Person shall have been previously provided to Buyer or shall be provided to Buyer before or concurrently with the time it is provided to such Person; and (y) participate in discussions and negotiations with the Person making such Acquisition Proposal.

(iii) BBI and Biscayne will promptly, and in any event by 5:00 p.m. on the next Business Day, notify Buyer in writing of (A) the receipt of any Acquisition Proposal, (B) any material modification of or amendment to any Acquisition Proposal, (C) any request for nonpublic information relating to any of the BBI Companies, or for access to their properties, books or records, by any Person that has made, or that informs any of the BBI Companies or their respective Boards of Directors or representatives that such Person is considering making, an Acquisition Proposal, or (D) the entry into discussions or negotiations concerning any Acquisition Proposal in accordance with Paragraph 5.02(l)(ii) above, which notification shall describe the Acquisition Proposal, amendment, modification or request, identify the Person making such Acquisition Proposal, amendment, modification or request or with which BBI has entered into discussions or negotiations, and specify the material terms of any Acquisition Proposal, amendment, modification or request. BBI shall keep Buyer fully informed, on a prompt basis, of any material changes in the status of and any material changes or modifications in the terms of any such Acquisition Proposal.

(m) *Acquisition or Disposition of Assets; Purchase of Services; Lending.*  
None of the BBI Companies will:

(i) sell or lease (as lessor), or enter into or become bound by any contract, agreement, option or commitment relating to the sale, lease (as lessor) or other disposition of, any BBI Real Property in any amount, other than the sale in arms'-length transactions of BBI Real Property acquired by Biscayne in connection with the foreclosure in the Ordinary Course of a deed of trust, mortgage or other security instrument that secures a Loan or a deed-in-lieu thereof;

(ii) except as provided below, sell or lease (as lessor), or enter into or become bound by any contract, agreement, option or commitment relating to the sale, lease (as lessor) or other disposition of, any equipment or any other fixed or capital asset having a book value or a fair market value, whichever is greater, of more than \$100,000 in the case of any individual item or asset, or \$250,000 in the aggregate for all such items or Assets, other than the sale in arms'-length transactions of equipment or other fixed Assets acquired in the Ordinary Course in connection with enforcement of a lien or security interest that secures a Loan;

(iii) purchase or lease (as lessee), or enter into or become bound by any contract, agreement, option or commitment relating to the purchase, lease (as lessee) or other acquisition of, any real property in any amount, other than (A) real property that is the subject of a deed of trust, mortgage or other security instrument securing a Loan that is being foreclosed upon in the Ordinary Course or that is acquired by Biscayne by deed-in-lieu of such a foreclosure, and (B) amendments, modifications and extensions to Lease Agreements which are effected in accordance with Paragraph 5.02(r) below;

(iv) purchase or lease (as lessee), or enter into or become bound by any contract, agreement, option or commitment relating to the purchase, lease (as lessee) or other acquisition of, any equipment or any other fixed asset (other than real property) having a purchase price, or involving aggregate lease payments, in excess of \$100,000 in the case of any individual item, or \$250,000 in the aggregate for all such items or Assets, other than any equipment or other fixed Assets that are subject to a lien or security interest securing a Loan that is being enforced in the Ordinary Course;

(v) enter into, or amend, renew or extend the term or termination date of, any purchase or other commitment or contract for supplies or services other than in the Ordinary Course;

(vi) except in the Ordinary Course, sell or enter into or become bound by any contract, agreement, option or commitment to sell any Loan or other receivable or any participation in any Loan or other receivable; *provided*, that prior to selling or entering into or becoming bound by any contract, agreement, option or commitment to sell any Loan (other than a residential mortgage Loan) or other receivable or any participation in any Loan or other receivable, the BBI Companies will provide written notice to Buyer not later than the date that is ten Business Days prior to the proposed sale, contract, agreement, option or commitment, and Buyer shall have the right to purchase such Loan or other receivable or participation interest upon written notice to the respective BBI Company within five Business Days following Buyer's receipt of notice from the BBI Company on the same terms and conditions as the BBI Company proposed to sell the Loan, receivable or participation to any other Person;

(vii) other than pursuant to contractual obligations Previously Disclosed to Buyer, purchase or repurchase, or enter into or become bound by any contract, agreement, option or commitment to purchase or repurchase, any Loan or other receivable or any participation in any Loan or other receivable;

(viii) enter into, or amend, renew or extend the term or termination date of, any agreement or contract to purchase, lease, license, use or otherwise acquire any Intellectual Property or property rights, including computer software (other than click wrap licenses, shrink wrap licenses or other similar licenses for commercial off-the-shelf software);

(ix) sell, assign, terminate, waive or dispose of its rights to or otherwise give any other Person its permission or consent to use or do business under the corporate name of any of the BBI Companies or any name similar thereto, or any trade name, trademark, copyright, service mark or Intellectual Property right or license, or release, transfer or waive any license or right granted to them by any other Person to use any corporate name, trademark, trade name, copyright, service mark or Intellectual Property right or license;

(x) except in the Ordinary Course with respect to investment securities, sell or dispose of, or enter into or become bound by any contract, agreement, option or

commitment relating to the sale or other disposition of, any other Asset (whether tangible or intangible) of material value or that is material to the conduct of the businesses of the BBI Companies as currently conducted; or

(xi) make, renew or acquire any Loan or issue a commitment (including a letter of credit) or renew or extend an existing commitment for any Loan, or amend or modify in any material respect any Loan (including in any manner that would result in any additional extension of credit, principal forgiveness, or effect any uncompensated release of collateral, *i.e.*, at a value below the fair market value thereof as determined by Biscayne), except for (i) Loans or commitments for Loans by Biscayne in the Ordinary Course, or (ii) amendments or modifications by Biscayne of any existing Loan in the Ordinary Course, and in the case of each of (i) and (ii), in compliance with Biscayne's underwriting and related Loan policies in effect as of the date of this Agreement; *provided, however*, that at least two Business Days before it approves or commits itself to a new Loan (x) in an amount equal to or in excess of \$2,500,000 to a borrower to which or whom Biscayne does not have any existing credit exposure, or (y) in an amount equal to or in excess of \$2,000,000 to a borrower to which or whom Biscayne has an existing aggregate credit exposure equal to or in excess of \$5,000,000 (including, in the case of a borrower other than an individual, Biscayne's credit exposure to the borrower's affiliated entities and principals), Biscayne will consult with and discuss the proposed Loan and its terms with Buyer's Chief Credit Policy Officer or his designee and promptly provide such additional information about the proposed Loan and the borrower and, in the case of proposed Loans under (y) above, existing credit relationships, as the Chief Credit Policy Officer or his designee shall request, including information supporting Biscayne's underwriting analysis and decision. For the avoidance of doubt, Biscayne's obligation with respect to the Loans described in (x) and (y) above shall be to consult with Buyer's Chief Credit Policy Officer or his designee and provide information that he shall request, and Biscayne shall not be required to obtain Buyer's approval of or consent to any such Loan.

(n) **Debt; Liabilities.** With the exception of Biscayne's acceptance of deposits, entry into repurchase agreements, purchases of Federal Funds, and borrowings from the Federal Home Loan Bank of Atlanta for a term of no more than 90 days, in any such case in the Ordinary Course, none of the BBI Companies will (i) enter into or become bound by any promissory note, loan agreement or other agreement or arrangement pertaining to their borrowing of money or any other debt obligation, (ii) assume, guarantee, endorse or otherwise become responsible or liable for any obligation of any other Person (except pursuant to letters of credit issued by Biscayne in the Ordinary Course), or (iii) except in the Ordinary Course, incur any other Liability.

(o) **Liens; Encumbrances.** With the exception of Biscayne's pledges of Loans or portfolio securities to the Federal Home Loan Bank of Atlanta to secure borrowings permitted by Paragraph 5.02(n) above, and pledges of securities in connection with repurchase agreements, in each case in the Ordinary Course, none of the BBI Companies will mortgage, pledge or subject any of their Assets to, or permit any of their Assets to become or, except for any Liens Previously Disclosed to Buyer, remain subject to, any Lien.

(p) **Waiver of Rights.** None of the BBI Companies will waive, release, or compromise any rights in their favor against or with respect to any of their current or former officers, directors, employees, affiliates or consultants or members of families of current or former officers, directors, employees, affiliates or consultants (including forgiveness of any Loans or other obligations), nor will any of them waive, release or compromise any material rights against or with respect to any other Person except in the Ordinary Course and in good faith for fair value in money or money's worth.



(q) **Other Contracts.** Except as Previously Disclosed to Buyer, none of the BBI Companies will enter into or become bound by, or modify, amend or renew the term of, any contracts, agreements, commitments, pledges or understandings (i) for or with respect to any charitable or non-profit contributions, other than (A) contributions or pledges made to charitable or non-profit organizations in amounts, at times and on terms which generally are consistent with Biscayne's past charitable or non-profit contributions, and (B) with respect to new contracts, commitments, pledges or understandings for charitable or non-profit contributions, which do not in any individual case exceed \$5,000, or which in the aggregate would not exceed \$50,000, including all payments in the case of any multi-year pledge; (ii) with any Regulatory Authority except as required by Law; (iii) except as otherwise permitted by another provision of this Paragraph 5.02, of a type described in Paragraph 1.67; or (iv) in the case of contracts or agreements that would be permitted without Buyer's prior consent under another Subparagraph of this Paragraph 5.02, whether or not in the Ordinary Course, which would obligate or commit them to make expenditures over any period of time of more than \$50,000 in the case of any one contract, agreement, commitment or understanding, or more than \$200,000 in the case of all contracts, agreements, commitments or understandings.

(r) **Changes in Lease Agreements.** None of the BBI Companies will (i) surrender its leasehold interest in any Parcel of leased BBI Real Property, or seek or agree to the termination of the Lease Agreement pertaining to any such Parcel, other than at the end of the term of a Lease Agreement under the terms of which it does not have an option to renew, (ii) modify or amend the Lease Agreement pertaining to any Parcel of leased BBI Real Property, or (iii) renew any Lease Agreement, or permit any Lease Agreement to be automatically renewed, without (in the case of each of (i), (ii) and (iii)) first consulting with Buyer and permitting Buyer to express its views regarding such surrender, termination, modification, amendment or renewal, and the terms and conditions thereof; *provided*, that, before agreeing to or permitting any proposed renewal or extension of a Lease Agreement, at Buyer's request BBI and Biscayne shall first use Commercially Reasonable Efforts to attempt to obtain (x) an extension of the date prior to expiration of the Lease Agreement by which it must give notice of renewal or termination of the Lease Agreement, (y) a month-to-month or short-term lease arrangement, or (z) some arrangement for possession of the leased Parcel other than a full-term renewal, in each case in an effort to permit Buyer, following the Effective Time, to assess its needs and plans for the Parcel that is the subject of that Lease Agreement before becoming committed to a longer-term lease obligation.

(s) **Tax Loss Benefits.** None of the BBI Companies will take, or cause or permit any other Person to take, any action (other than actions directly related to the Merger) that may or could result in a loss of the ability of BBI or Biscayne before the Merger, or Buyer after the Merger, to utilize any acquired tax benefits from the transaction, including federal and state net operating loss carryforwards and federal and state unrealized built in Tax losses reflected in the BBI Audited Financial Statements.

**5.03. Notice of Certain Changes or Events.** Following the date of this Agreement and up to and including the Effective Time, BBI and Biscayne will within five Business Days notify Buyer in writing of and provide to it such further information as it shall request regarding (a) any BBI Material Change, or of the actual or, to the Knowledge of BBI, prospective, existence or occurrence of any condition or event which, with the lapse of time or otherwise, and individually or together with other such conditions or events, is reasonably likely to cause, create or result in any such BBI Material Change, (b) the actual or, to the Knowledge of BBI, prospective, existence or occurrence of (i) any condition or event which has caused or, with the lapse of time or otherwise, is reasonably likely to cause, any statement, representation or warranty of BBI or Biscayne herein to be or become inaccurate, misleading or incomplete in any material respect, or which has resulted or is reasonably likely to cause, create or result in the breach or violation in any material respect of any of BBI's or Biscayne's covenants or agreements contained herein or in the failure of any of the conditions described in Paragraphs 8.01 or

8.03; and (ii) any event, fact or condition, including the BBI Companies' discovery or receipt of notification regarding a failure by any of them to comply with any applicable Laws, that may reasonably be expected to prevent or materially impede or delay BBI, Biscayne or Buyer from obtaining the Required Regulatory Approvals or otherwise from completing, the Merger or other transactions described in this Agreement.

**5.04. Further Action and Cooperation; Instruments of Transfer.** BBI and Biscayne each will (a) take or cause to be taken all action required of it under this Agreement as promptly as practicable so as to permit the consummation of the Merger, the Subsequent Transactions and other transactions described herein at the earliest practicable date, (b) perform all acts and execute and deliver to Buyer all documents or instruments required of it herein, or as otherwise shall be reasonably necessary or useful to or requested by Buyer, in consummating such transactions, and (c) cooperate with Buyer in carrying out, and pursue diligently the expeditious completion of, such transactions.

## **ARTICLE VI—COVENANTS OF BUYER**

Buyer covenants and agrees with BBI and Biscayne as described in the following Paragraphs.

**6.01. Final Tax Returns.** Following the Effective Time, Buyer will make all necessary arrangements for the preparation and filing of the BBI Companies' final federal and state income tax returns for the year in which the Effective Time occurs.

**6.02. Notice of Certain Changes or Events.** Following the date of this Agreement up to and including the Effective Time, Buyer will within two Business Days notify BBI in writing of and provide to it such further information as it shall request regarding the actual or, to the Knowledge of Buyer, prospective, existence or occurrence of (a) any condition or event which has caused or, with the lapse of time or otherwise, is reasonably likely to cause, any statement, representation or warranty of Buyer herein to be or become inaccurate, misleading or incomplete in any material respect, or which has resulted or is reasonably likely to cause, create or result in the breach or violation in any material respect of any of Buyer's covenants or agreements contained herein or in the failure of any of the conditions described in Paragraphs 8.01 or 8.02, and (b) any event, fact or condition that may reasonably be expected to prevent or materially impede or delay BBI, Biscayne or Buyer from obtaining the Required Regulatory Approvals or otherwise from completing, the Merger or other transactions described in this Agreement.

**6.03. Further Action; Instruments of Transfer.** Buyer will (a) take or cause to be taken all action required of it under this Agreement as promptly as practicable so as to permit the consummation of the transactions described herein at the earliest practicable date, (b) perform all acts and execute and deliver to BBI and Biscayne all documents or instruments required of it herein, and (c) cooperate with BBI and Biscayne in carrying out, and pursue diligently the expeditious completion of, such transactions.

### **6.04. Indemnification and Directors and Officers Liability Insurance.**

(a) **Indemnification.** From and after the Effective Time, Buyer shall indemnify, defend and hold harmless the present and former directors, officers, and employees of BBI and Biscayne (the "Indemnified Parties"), against all costs and expenses (including reasonable attorneys' fees), judgements, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative arising out of actions or omissions of such persons in the course of performing their duties for BBI and Biscayne occurring at or before the Effective Time (including the transactions contemplated by this Agreement)

(each, a "Claim"), to the maximum extent authorized by Section 607.0850 of the Florida Business Corporation Act as it now exists or may hereafter be amended (the "FBCA"), but, in the case of any such amendment, only to the extent that such amendment permits Buyer to provide broader indemnification rights than said law permitted Buyer to provide prior to such amendment. Buyer shall pay such expenses to each Indemnified Party to the fullest extent permitted by the provisions of the FCBA, upon receipt of an undertaking from the Indemnified Party to repay such advanced expenses if the Indemnified Party is ultimately found not to be entitled to indemnification hereunder. Any payments made under any directors' and officers' liability Insurance policy to such person shall be offset against the indemnification obligation set forth in this Paragraph 6.04. Notwithstanding anything to the contrary in this Paragraph 6.04, Buyer shall not be obligated to indemnify any person if and to the extent such indemnification would not be permitted under the FBCA or applicable Law. Buyer's obligations under this Paragraph 6.04 are intended to be enforceable against Buyer directly by the individuals entitled to indemnification hereunder and shall be binding on Buyer's successors and permitted assigns.

(b) **Directors' and Officers' Liability Insurance.** On or prior to the Effective Time, Buyer, or at Buyer's direction, BBI in consultation with Buyer, shall purchase a prepaid, six-year "tail" policy providing directors' and officers' liability insurance with respect to claims arising from facts or events which occurred prior to the Effective Time and that covers persons who are currently covered by, provides at least the same coverage and policy limits as, and contains terms and conditions which are substantially no less advantageous than, BBI's directors' and officers' liability insurance policy in effect as of the date of this Agreement. In lieu of such a "tail" policy, Buyer may, at its option, substitute therefor other policies that provide insurance for a six-year term with respect to claims arising from facts or events which occurred prior to the Effective Time and that cover persons who are currently covered by, provide at least the same coverage and policy limits as, and contain terms and conditions which are substantially no less advantageous than, BBI's directors' and officers' liability insurance policy in effect as of the date of this Agreement.

Notwithstanding anything contained herein to the contrary, in no event shall the aggregate premium payments for "tail" or other insurance policies exceed, for the portion related to BBI's and Biscayne's directors and officers, 200% of the annual premium payments currently paid on BBI's directors' and officers' liability insurance policy in effect as of the date of this Agreement (the "Maximum Amount"). If the amount of the premiums necessary to maintain or procure such "tail" or other insurance coverage exceeds the Maximum Amount, or if such "tail" or extended coverage is not available for six years, or with at least the same coverage and policy limits as, and containing terms and conditions which are substantially no less advantageous than, BBI's existing directors' and officers' liability insurance policy, Buyer shall use its reasonable best efforts to maintain the most advantageous policies of directors' and officers' liability insurance obtainable for a premium not exceeding the Maximum Amount.

(c) **Successors.** If Buyer or any of its successors and assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) shall transfer all or substantially all of its property and assets to any individual, corporation or other entity, then, in each such case, proper provisions shall be made so that the successors and assigns of Buyer and its subsidiaries shall assume the obligations set forth in this Paragraph 6.04.

**6.05. Assumption of Subordinated Debt.** As of the Effective Time, Buyer will assume BBI's obligation for the due and punctual payment of the unpaid principal balance, and interest thereon, owed by BBI, and the due and punctual performance of all covenants and conditions on the part of BBI to be performed or observed, under:

(a) that certain 7.125% Subordinated Note due February 25, 2025, dated February 25, 2015, in the original principal amount of \$5,000,000;

(b) that certain Term Note Due October 1, 2025, dated October 15, 2015, in the original principal amount of \$7,500,000; and

(c) that certain Second Amended, Restated, and Consolidated Promissory Note dated February 15, 2017 in the original principal amount of \$5,765,165.95.

## **ARTICLE VII—ADDITIONAL MUTUAL AGREEMENTS**

Except as otherwise specifically provided in this Agreement, BBI, Biscayne and Buyer mutually covenant and agree as follows.

**7.01. Regulatory Approvals.** As soon as practicable following the date of this Agreement, BBI, Biscayne and Buyer each will: (a) prepare and file, or cause to be prepared and filed, in each case within 30 days following the date of this Agreement, all applications required to be filed by it or them under applicable Law for the Required Regulatory Approvals, (b) use Commercially Reasonable Efforts to obtain all Required Regulatory Approvals, and (c) before the filing of any such application, give the other parties an opportunity to review and comment on the form and content of such application. BBI, Biscayne and Buyer shall promptly furnish each other with copies of all applications, notices, petitions and filings with all Regulatory Authorities (including copies of all supplements and responses of information provided in connection with such applications, notices, petitions and filings), and all written communications received by BBI, Biscayne, and Buyer, as the case may be, or any of their respective subsidiaries, affiliates or associates from, or delivered by any of the foregoing to, any Regulatory Authority, in respect of the transactions contemplated by this Agreement. Should the appearance of any of the officers, directors, employees, legal counsel or other advisers of BBI, Biscayne or Buyer be requested by any of the other parties or by any Regulatory Authority at any hearing in connection with any such application, BBI, Biscayne and/or Buyer, as applicable, will use Commercially Reasonable Efforts to arrange for such appearance.

**7.02. Information for Proxy Statement and Applications for Regulatory Approvals.** BBI, Biscayne and Buyer each agrees (a) to cooperate with the others in the preparation of the Proxy Statement and applications for Required Regulatory Approvals, to promptly respond to requests by any of the other parties and their legal counsel for information, and to provide all information, documents, financial statements or other material that is required for, or that may be reasonably requested by any other party for inclusion in, any such document, and (b) that none of the information provided by it in writing for inclusion in any such application or the Proxy Statement will contain any untrue statement of a material fact, or omit any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, at and as of the time (i) the Proxy Statement is mailed to BBI's shareholders, (ii) the applications for Required Regulatory Approvals are filed, and (iii) the Required Regulatory Approvals are granted.

**7.03. Announcements.** BBI and Buyer will issue a joint press release promptly after entry into this Agreement and, if the Merger Agreement is approved by BBI's shareholders at the BBI Shareholders' Meeting, a joint press release promptly following that meeting announcing such approval. No Persons other than BBI and Buyer are authorized to make any public announcements or public statements about this Agreement or any of the transactions described herein. Without the prior review and consent of the other parties, neither BBI, Biscayne, Buyer, nor any Person acting on behalf of any of

them, will make any public announcement, public statement or any other public disclosure of any nature to any Person as to the terms and conditions of this Agreement or the transactions described in or contemplated by this Agreement: *provided*, that any of them, and Buyer's parent holding company, may make any statement or disclosure about this Agreement or the transactions described in this Agreement which it, in good faith, believes is required to be made in any application for any Required Regulatory Approval or is otherwise required by any Regulatory Authority or by Law (including, in the case of Buyer's parent holding company, any disclosure required to be or, in accordance with good disclosure practice, should be, made in periodic reports it files with the SEC or otherwise publicly disclosed pursuant to the listing requirements of The NASDAQ Stock Market). However, before any of them makes any such permitted statement or disclosure, it shall provide a copy of the proposed statement or disclosure to the other parties and give such other parties a reasonable opportunity to comment on the content thereof.

#### **7.04. Confidential Information.**

(a) For purposes of this Paragraph 7.04, "Confidential Information" refers to any information (including business and financial information) that a party to whom the information pertains (an "Informing Party") provides or makes available in connection with this Agreement (including information provided or made available in connection with any previous negotiations among BBI and Buyer) to a party for whose benefit the information is provided, or to that party's affiliates, directors, officers, employees, attorneys, advisers, consultants, representatives or agents (a "Receiving Party"), or which a Receiving Party may otherwise obtain (including information obtained in connection with any previous negotiations among BBI and Buyer) from any examination of an Informing Party's documents, books, records, files or other recorded materials or from any discussions with any of the Informing Party's directors, officers, employees, attorneys, advisers, consultants, representatives and agents, and shall be deemed to include, (i) all such documents, books, records, files or other recorded materials themselves and all information contained therein (whether maintained in writing, electronically, on microfiche or otherwise), (ii) all corporate minutes, financial projections and budgets, historical and projected sales reports, acquisition or other expansion analyses or plans, pro forma financial data, BBI spending budgets and plans, market studies and business plans, (iii) all information relative to financial results and condition, operations, policies and procedures, computer systems and software, shareholders, employees, officers and directors, and (iv) all information relative to customers and former or prospective customers.

(b) Prior to the Effective Time and following any termination of this Agreement (other than upon consummation of the Merger):

(i) all Confidential Information of an Informing Party is proprietary to the Informing Party and constitutes either trade secrets or confidential information of the Informing Party, is to be held in strict confidence by a Receiving Party and, except as otherwise provided herein, may not be disclosed by a Receiving Party to any Person not a party to this Agreement, unless the Receiving Party can demonstrate that the same information as the Confidential Information to be disclosed:

(A) already was in his, her or its possession prior to such Confidential Information being obtained from the Informing Party;

(B) already was publicly available or, at that time, had become publicly available through no fault of, or violation of this Paragraph 7.04 by, the Receiving Party or any other Person that the Receiving Party knows, or has reason to know, is obligated to protect such Confidential Information; or

(C) was developed independently by or for the Receiving Party, without the use of the Confidential Information disclosed to or obtained by the Receiving Party; and

(ii) the Receiving Party shall not use any Confidential Information of the Informing Party in an unlawful manner, to interfere with or attempt to terminate or otherwise adversely affect any actual or proposed contractual or business relationship of the Informing Party, or for any other purposes other than in conjunction with the transactions described herein. Without limiting the generality of the foregoing, in no event shall the Receiving Party use any Confidential Information of the Informing Party, directly or indirectly, for the purpose of competing against or soliciting the customers of the Informing Party.

However, notwithstanding anything in this Paragraph 7.04 to the contrary, prior to the Effective Time, BBI, Biscayne or Buyer, as a Receiving Party, may disclose Confidential Information of an Informing Party to the Receiving Party's affiliates, directors, officers, employees, agents, attorneys, advisers and consultants who are directly involved in the transactions contemplated by this Agreement, on a need to know basis and only if such Persons agree to be bound by the restrictions and obligations of this Paragraph 7.04 or otherwise owe an obligation of confidentiality to the Receiving Party. The Receiving Party shall be obligated to enforce its obligations under this Paragraph 7.04 against all Persons to whom it discloses Confidential Information and shall be responsible and liable to the Informing Party for any disclosure of Confidential Information by such Persons in violation of such restrictions and obligations.

(c) In the event this Agreement is terminated and the Merger is not consummated, each Receiving Party will deliver or cause to be delivered to each Informing Party all recorded Confidential Information of each Informing Party in the possession of each Receiving Party, or destroy and provide to each Informing Party an affidavit as to the destruction of, all copies of such Confidential Information; *provided however*, that a Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held electronically in archive or back-up systems in accordance with the Receiving Party's general systems archiving or backup policies, and a Receiving Party shall be permitted to retain one copy for archival, governance and/or regulatory purposes.

(d) Notwithstanding anything contained in this Paragraph 7.04 to the contrary, neither BBI, Biscayne nor Buyer, as a Receiving Party, shall be prohibited from disclosing any Confidential Information of an Informing Party, or shall be required to obtain the prior consent of an Informing Party for any such disclosure, which it, in good faith, believes is required to be disclosed in any application for a Required Regulatory Approval, or which it, in good faith, and upon the advice of its legal counsel, believes is otherwise required by Law or an order or subpoena of any court or Regulatory Authority; *provided*, that before any such disclosure may be made by a Receiving Party upon the advice of its legal counsel, it shall, unless such notice is prohibited by Law, give the Informing Party reasonable notice of its intent to make such disclosure, the form and content of that disclosure, and the basis upon which its legal counsel has advised it that such disclosure is required by Law, so that the Informing Party may seek a protective order or other similar or appropriate relief, and the Receiving Party also shall undertake in good faith to have the Confidential Information to be disclosed treated confidentially by the party to whom the disclosure is made.

(e) This Paragraph 7.04 supersedes and replaces in their entirety the provisions of any other confidentiality or non-disclosure agreement entered into by Buyer with BBI or Biscayne or their advisers prior to the date of this Agreement, including without limitation that certain

Confidentiality and Non-Disclosure Agreement dated as of June 1, 2018, in favor of BBI, Biscayne and Icy Beans, Inc., and any such other agreements shall have no further effect.

**7.05. Expenses.** Except as otherwise provided herein, including pursuant to Paragraph 9.03 below, and whether or not this Agreement shall be terminated or the Merger shall be consummated, BBI, Biscayne, Buyer and Merger Sub each shall pay its or their own legal, accounting, financial and other consulting or advisory fees, and all its or their other costs and expenses, incurred or to be incurred in connection with the execution and performance of its or their obligations under this Agreement, or otherwise in connection with this Agreement and the Merger and other transactions described herein (including filing fees, printing and mailing costs, and other out-of-pocket expenses). Subject to the provisions of Paragraph 9.03 below, for purposes of this Agreement expenses associated with the printing and mailing of the Proxy Statement and all amounts owed by BBI to Keefe, Bruyette & Woods for its services will be deemed to have been incurred solely by BBI. For purposes of clarification, Buyer agrees that, prior to the Effective Time, BBI and Biscayne shall not be required to pay any contract termination fees or deconversion fees related to Biscayne's data processing contracts.

**7.06. Employment and Benefit Matters.**

(a) **Employment of Biscayne's Employees.** Each employee of Biscayne at the Effective Time shall remain an employee of Biscayne. When the Bank Merger becomes effective, each employee who is then currently employed by Biscayne automatically shall become an employee of Buyer (a "Continuing Employee") without any action by that employee or Buyer. Except to the extent otherwise provided in a written agreement with a Continuing Employee which is entered into or expressly assumed by Buyer, the employment of each Continuing Employee will be on an "at will" basis in such a position, with such title, at such location within Buyer's system, and for such rate of compensation, as shall be determined by Buyer in the Ordinary Course. However, nothing in this Agreement shall be deemed to constitute an employment agreement between Buyer and any such Person, to obligate Buyer to continue to employ any such Person for any specific term or period of time, in any specific position, or at any specific salary or rate of compensation, or at all, or to restrict Buyer's right to terminate the employment of any such Person at any time following the Bank Merger and for any reason satisfactory to it.

(b) **Employee Benefits.** After the Bank Merger becomes effective, each Continuing Employee shall be entitled to participate, at Buyer's election, in either the employee benefit plans and programs of Biscayne that they participate in at the Effective Time, to the extent those plans and programs continue to be maintained by Buyer for some time following the Bank Merger, or in the employee benefit plans and programs provided generally by Buyer to its employees from time to time ("Buyer Benefit Plans") on the same basis, and subject to the same eligibility and vesting requirements and other conditions, restrictions and limitations, as generally are in effect and applicable to other new employees of Buyer. However, subject to applicable Law, for purposes of determining eligibility to participate and vesting under Buyer's Section 401(k) plan, and participation in Buyer Benefit Plans generally, as well as for purposes of benefit accrual under Buyer's paid time off and Position Elimination Policy, each Continuing Employee will be given credit for his or her time of prior service with Biscayne based on his or her date of hire (for benefit plan purposes) reflected in Biscayne's employment records; *provided*, that notwithstanding anything contained in this Agreement to the contrary, in no event shall any Continuing Employee be or become eligible to participate in, or for benefits under, Buyer's defined benefit pension plans (which have been frozen to new participants). As part of Buyer's first payment of salary and wages to Continuing Employees who elect to obtain health insurance coverage under Buyer's Preferred Provider Organization under the First-Citizens Bank & Trust Company Welfare Benefit Plan, Buyer will make a one-time payment of additional compensation in the sum of (i) \$1,000 to each Continuing Employee who previously had individual coverage under Biscayne's group medical plan

insured by United Healthcare, or (ii) \$2,000 to each Continuing Employee who previously had family coverage under Biscayne's group medical plan insured by United Healthcare. The terms of participation by Continuing Employees in Buyer's health, dental and vision insurance plans and other programs shall include the waiver of any waiting periods.

(c) ***Treatment of Certain Contracts and Compensatory Arrangements.***

(i) Immediately prior to the Effective Time, Biscayne shall pay each Continuing Employee who has vested rights under Biscayne's vacation, personal leave and sick leave policy cash for the *pro rata* portion of the total numbers of days of vacation or other such leave awarded to him or her for 2019, based on the number of days of 2019 elapsed between December 31, 2018 and the Closing Date, minus the number of days of vacation or other such leave which he or she has used, as of such time, during 2019.

(ii) At the Effective Time, and by virtue of the Merger, Buyer shall become responsible for Biscayne's obligations under the Split Dollar Insurance Agreements Previously Disclosed to Buyer.

(iii) At the Effective Time, Buyer shall assume the Executive Severance Agreement dated January 22, 2018, between Biscayne and Lorie Yarchin.

(d) ***Termination of BBI 401(k) Plan.*** Following the date of this Agreement, if requested by Buyer, BBI and Biscayne shall take, or cause to be taken, such actions, including the adoption of appropriate plan amendments and board resolutions, as Buyer shall consider to be necessary to terminate the BBI 401(k) Plan in accordance with its terms and applicable Law, effective immediately prior to the Effective Time. As successor to BBI and Biscayne, Buyer agrees that, as of the Effective Time, it will assume the duties of BBI and Biscayne with respect to completion of the termination and liquidation of the BBI 401(k) Plan, including, at Buyer's election, filings with the Internal Revenue Service ("IRS") for a determination letter on the termination of the BBI 401(k) Plan. Following receipt of the IRS determination letter, participants in the Plan may elect to receive a distribution of the Assets credited to their respective Plan accounts at that time, and those Continuing Employees who remain employed by Buyer at that time may roll-over their distributions to their plan accounts under Buyer's Section 401(k) plan, subject to and in accordance with the terms of Buyer's Section 401(k) plan.

(e) ***Termination of Other Plans.*** Following the date of this Agreement, if requested by Buyer, BBI and Biscayne shall, at the direction of Buyer, take, or cause to be taken, such actions, including the adoption of appropriate plan amendments and board resolutions, as Buyer shall consider to be necessary to:

(i) terminate, in accordance with their respective terms and applicable Law, any and all medical, dental, health, disability and life insurance plans (except for such plans as are assumed by Buyer pursuant to Paragraph 7.06(c)), and all other employee benefit plans, maintained by any of the BBI Companies for the benefit of any of their current or former officers, employees, contractors or directors or any of their beneficiaries, effective immediately prior to the Effective Time; and

(ii) to cause the Committee of BBI's Board of Directors that administers the BBI Option Plan to terminate, effective at the Effective Time, that Plan and, in the case of each outstanding BBI Stock Option that will be cancelled and converted into the right to receive a cash payment as provided in Paragraph 2.04(f) above, prior to the Closing BBI will



obtain from the holder of each such BBI Stock Option, and deliver to Buyer prior to the Closing, the written cancellation agreements described in Paragraph 2.04(f) above.

(f) **Severance.** Any severance payment to which a Continuing Employee may be entitled following the Effective Time will be determined in keeping with the Buyer's Position Elimination Policy.

Without limiting the generality of Paragraph 11.11, the provisions of this Paragraph 7.06 are solely for the benefit of the parties to this Agreement, and no Continuing Employee, current or former employee or any other individual associated with BBI or Biscayne shall be regarded for any purpose as a third-party beneficiary of this Agreement (except that Buyer's obligations under Paragraph 7.06(c) are intended to be enforceable against Buyer directly by the individuals entitled to the benefits thereunder and shall be binding on Buyer's successors and permitted assigns). In no event shall the terms of this Agreement (i) establish, amend, or modify any BBI Benefit Plan or any "employee benefit plan" as defined in Section 3(3) of ERISA, or any other benefit plan, program, agreement or arrangement maintained or sponsored by BBI or Biscayne or any of their affiliates; (ii) alter or limit the ability of Buyer to amend, modify or terminate any BBI Benefit Plan, employment agreement or any other benefit or employment plan, program, agreement or arrangement after the Effective Time; or (iii) confer upon any current or former employee, officer, director or consultant, any right to employment or continued employment or continued service with Buyer or any of Buyer's affiliated companies for any period of time, or constitute or create an employment agreement with any employee, or interfere with or restrict in any way the rights of the Buyer to discharge or terminate the services of any employee, officer, director or consultant of any BBI Company at any time for any reason whatsoever, with or without cause.

**7.07. Conversion and Transition Preparations; Operating Functions.** BBI and Biscayne each shall cooperate with Buyer in connection with planning for the efficient and orderly combination of the parties and Buyer's operation of Biscayne's business, and in preparing for the conversion and consolidation of appropriate operating and data processing functions and systems and business operations at the Effective Time or on such later date as Buyer shall determine. The BBI Companies each agree to request consents of their vendors, service providers and other third parties that are necessary to give Buyer access to, or to permit the BBI Companies to provide information to Buyer, regarding, the business and operations and any contracts of the BBI Companies and their data processing systems, subject to Buyer's agreement to enter into customary confidentiality, non-disclosure and similar agreements with such service providers.

Without limiting the foregoing, the BBI Companies shall provide Buyer with access to their operations and data processing personnel and systems, together with office space and support services (and other reasonably requested support and assistance) in connection with the foregoing, and officers of the BBI Companies shall meet from time to time with representatives of Buyer as Buyer may reasonably request to review the financial and operational affairs of the BBI Companies, and BBI and Biscayne shall give due consideration to Buyer's input on such matters, with the understanding that, notwithstanding any other provision contained in this Agreement, (a) Buyer shall under no circumstance be permitted to exercise control of BBI or Biscayne prior to the Effective Time, (b) neither BBI nor Biscayne shall be under any obligation to act in a manner that could reasonably be deemed to constitute anti-competitive behavior under federal or state antitrust Laws, and (c) neither BBI nor Biscayne shall be required to agree to any material obligation that is not contingent upon the consummation of the Merger.

## **ARTICLE VIII—CONDITIONS PRECEDENT TO MERGER**

**8.01. Conditions to all Parties' Obligations.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of each of BBI, Biscayne, Buyer and Merger Sub to

consummate the transactions described herein shall be conditioned upon the satisfaction or waiver of each of the following conditions precedent on or before the Closing Date:

(a) **Regulatory Approvals.** (i) BBI, Biscayne and Buyer shall have received all Required Regulatory Approvals; (ii) no Regulatory Authority shall have objected to or withdrawn its approval of such transactions; (iii) the 15-day or 30-day waiting period, as applicable, required following receipt of necessary approvals of federal Regulatory Authorities for review of the transactions described herein by the United States Department of Justice shall have expired and, in connection with any such review, no objection to the Merger or any such other transactions shall have been raised; and (iv) all other consents, waivers of applications, approvals and permissions, including corporate approvals, and the satisfaction of all other requirements, prescribed by Law (including applicable bank and bank holding company Laws) that are necessary to carrying out the transactions described in this Agreement shall have been procured.

(b) **Adverse Proceedings, Injunction, Illegality, Etc.** There shall not be any (i) order, decree or injunction of any court or agency of competent jurisdiction, Regulatory Authority or other governmental agency, or any statute, rule or regulation, which enjoins or prohibits the Merger or any of the other transactions described in this Agreement (including the Subsequent Transactions) or any of the parties hereto from consummating any such other transactions; (ii) Litigation by any Person (including any shareholder of BBI or any Regulatory Authority), pending before any court or governmental agency in which it is sought to restrain or prohibit BBI, Biscayne or Buyer from consummating the Merger or any such other transactions or carrying out any of the terms or provisions of this Agreement; or (iii) other Litigation seeking monetary damages or other relief pending against any of the BBI Companies, Buyer, or any of the BBI Companies' current or former officers, employees, directors, consultants, shareholders, affiliates or other Persons who have any right to be indemnified by any of the BBI Companies against Loss or Liability associated with such Litigation, whether relating to the Merger or other transactions described in this Agreement or otherwise, which Buyer reasonably believes, if decided adversely, is likely to result in a BBI Material Change.

(c) **Approval by Shareholders.** The holders of BBI Common Stock shall have duly approved this Agreement and the Merger and other transactions described in this Agreement at the BBI Shareholders' Meeting by appropriate resolutions and to the extent required by and in accordance with the provisions of this Agreement, applicable Law, and applicable provisions of BBI's Articles of Incorporation and Bylaws, and that approval shall remain in effect and not have been rescinded.

(d) **Articles of Merger; Other Actions.** The respective Articles of Merger described in Paragraph 2.06 shall have been duly executed and properly filed with and accepted by the Florida Department of State and North Carolina Secretary of State as provided in that Paragraph.

**8.02. Additional Conditions to BBI's Obligations.** Notwithstanding any other provision of this Agreement to the contrary, BBI's separate obligation to consummate the transactions described herein shall be conditioned upon the satisfaction or waiver of each of the following conditions precedent on or before the Closing Date.

(a) **Compliance with Laws.** Buyer and Merger Sub shall have complied in all material respects with all Laws applicable to the transactions described in this Agreement where their violation of or failure to comply with any such Law has caused or resulted in Buyer or Merger Sub being unable to consummate the Merger.

(b) **Buyer's Representations and Warranties and Performance of Agreements.** Unless waived in writing by BBI in the manner provided in Paragraph 11.03, each of the

representations and warranties of Buyer contained in this Agreement shall have been true and correct in all material respects as of the date of this Agreement, and they shall remain true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of such date (except that a representation or warranty that by its express terms speaks only as of the date of this Agreement or another date shall be true and correct as of such date), in either case without regard to any limitation or qualification based on the Knowledge of Buyer, except for exceptions which, individually or in the aggregate, do not, and cannot reasonably be expected to, prevent Buyer or Merger Sub from consummating the Merger; and, Buyer shall have complied with or performed in all material respects all of its obligations, covenants and agreements hereunder to be complied with or performed by it on or before the Closing Date.

BBI shall have received a certificate from Buyer dated as of the Closing Date and executed by Buyer's Chief Executive Officer or President and its Chief Financial Officer to the effect that the conditions of this Subparagraph have been met.

(c) ***Other Documents and Information.*** Buyer and Merger Sub shall have provided to BBI correct and complete copies, certified by their respective Secretaries, of resolutions of their respective Boards of Directors or, in the case of Buyer, its Executive Committee, pertaining to approval of, or otherwise relating to, this Agreement and the Merger and other transactions contemplated herein, together with a certificate of the incumbency of their respective officers who executed this Agreement or any other documents delivered to BBI in connection with the Closing.

(d) ***Deposit of Aggregate Merger Consideration.*** Buyer shall have deposited the Aggregate Merger Consideration with the Paying Agent as described in Paragraph 2.04(g).

(e) ***No Termination.*** This Agreement shall not have been terminated by Buyer under the provisions of Article IX.

**8.03. Additional Conditions to Buyer's and Merger Sub's Obligations.** Notwithstanding any other provision of this Agreement to the contrary, Buyer's and Merger Sub's separate obligations to consummate the transactions described herein shall be conditioned upon the satisfaction or waiver of each of the following conditions precedent on or before the Closing Date.

(a) ***Material Change.*** Since the date of this Agreement, there shall not have occurred any BBI Material Change, and there shall not have occurred any event or development, and there shall not exist any condition or circumstance, which, individually or in the aggregate, and with the lapse of time or otherwise, is reasonably likely to cause, create or result in a BBI Material Change.

(b) ***Compliance with Laws.*** BBI and Biscayne shall have complied in all material respects with all Laws applicable to the transactions described in this Agreement where their violation of or failure to comply with any such Law has caused, created or resulted in or, with the lapse of time or otherwise, is reasonably likely to cause, create or result in a BBI Material Change.

(c) ***BBI's and Biscayne's Representations and Warranties and Performance of Agreements.*** Unless waived in writing by Buyer in the manner provided in Paragraph 11.03, each of the representations and warranties of BBI and Biscayne contained in this Agreement shall have been true and correct in all material respects as of the date of this Agreement, and they shall remain true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of such date (except that a representation or warranty that by its express terms speaks only as of the date of this Agreement or another date shall be true and correct as of such date), in either case without regard to any limitation or qualification based on the Knowledge of BBI, except for

exceptions which, individually or in the aggregate, have not had, and cannot reasonably be expected to cause, create or result in a BBI Material Change; and, BBI and Biscayne shall have complied with or performed in all material respects all its or their obligations, covenants and agreements hereunder to be complied with or performed by it or them on or before the Closing Date.

Buyer shall have received certificates from BBI and Biscayne dated as of the Closing Date and executed by their respective Chief Executive Officers and Chief Financial Officers to the effect that the conditions of this Subparagraph have been met and as to such other matters as may be reasonably requested by Buyer.

(d) **Resignations of Officers and Directors.** Each executive officer and director of BBI and Biscayne immediately before the Effective Time shall have delivered to Buyer his or her resignation, in form and substance reasonably satisfactory to Buyer, from their positions as directors and officers (but not from their employment with Biscayne) effective as of the Effective Time or effective as of such later time as Buyer shall specify in the case of any one or more officers.

(e) **Consents to Assignment.** BBI and Biscayne shall have obtained and delivered to Buyer each consent and/or estoppel certificate requested by Buyer as described in Paragraph 5.01(h) which, in connection with the Merger or the Subsequent Transactions, is reasonably deemed by Buyer to be necessary in order for Buyer to succeed to the rights of BBI or Biscayne under any Lease Agreement or other Material Contract in accordance with the terms of that Lease Agreement or other Material Contract and otherwise to continue BBI's and Biscayne's operations after the Merger and the Subsequent Transactions substantially as and at the locations at which those operations are conducted on the date of this Agreement.

(f) **FIRPTA Certificate.** BBI and Biscayne shall have delivered to Buyer a certificate stating that BBI Common Stock is not a "United States real property interest" within the meaning of Section 897(c)(1)(A)(ii) of the Internal Revenue Code satisfying the requirements of §§1.897-2(h) and 1.1445-2(c)(3) of Title 26 of the Code of Federal Regulations, in form and substance reasonably satisfactory to Buyer.

(g) **Trademark Assignment.** Biscayne shall have executed and delivered to Buyer a written assignment of its trademarks, including all rights under common law and the respective corresponding U.S. trademark Registration Numbers 4,337,385 and 3,186,853, and Florida Registration Numbers T06000000156 and T06000000157, and the goodwill appurtenant thereto, in form and substance reasonably satisfactory to Buyer.

(h) **280G.** No amount paid or payable (whether in cash, in property, or in the form of benefits) by the BBI Companies, or by Buyer on behalf of any of the BBI Companies, in connection with the transactions contemplated hereby (either solely as a result thereof or as a result of such transactions in conjunction with any other event), including any items or amounts disclosed in BBI's Disclosure Schedule, will be an "excess parachute payment" within the meaning of Section 280G of the Internal Revenue Code, and none of the BBI Companies will have any indemnity or gross-up obligation for any Taxes imposed under Section 4999 of the Internal Revenue Code.

(i) **Owners' Affidavits.** To the extent Buyer shall elect to purchase a policy or policies of title insurance covering any Parcels, BBI and Biscayne shall have delivered to Buyer such owners' affidavits of title and indemnities, and any other affidavits as may reasonably be requested by Buyer or its title insurance company, for each Parcel, all in such forms as is reasonably acceptable to Buyer and to Buyer's title insurance company as the party insuring Buyer's title to each Parcel.

(j) **Retirement Plans.** BBI and Biscayne shall have taken all actions, including filings under the Internal Revenue Service Voluntary Correction Program, requested by Buyer with respect to the BBI 401(k) Plan as described in Paragraph 7.06(d) above.

(k) **Absence of Burdensome Condition.** No Required Regulatory Approval shall contain any condition or restriction that, after giving effect to the Merger, would reasonably be likely to have a material and adverse effect (measured on a scale relative to Buyer) on the condition (financial or otherwise), results of operations, liquidity, assets or deposit liabilities, properties or business of Buyer or any of its Subsidiaries or on Buyer's ability to continue the BBI Companies' businesses as and at the locations at which they are conducted on the date of this Agreement.

(l) **Other Documents and Information.** BBI and Biscayne each shall have provided to Buyer correct and complete copies (all certified by its Secretary) of its Articles of Incorporation and Bylaws, and resolutions of their Board of Directors and BBI's shareholders pertaining to approval of, or otherwise related to, this Agreement and the Merger and other transactions contemplated herein, together with a certificate as to the incumbency of BBI's and Biscayne's officers who executed this Agreement or any other documents delivered to Buyer in connection with the Closing.

(m) **No Termination.** This Agreement shall not have been terminated by BBI under the provisions of Article IX.

#### **ARTICLE IX—TERMINATION; BREACH; REMEDIES**

**9.01. Mutual Termination.** At any time prior to the Closing, and whether before or after approval of the Merger by BBI's shareholders, this Agreement may be terminated by the mutual written agreement of BBI and Buyer. Upon any such mutual termination, and except as otherwise provided herein (including Paragraph 11.01), all obligations of BBI, Biscayne, Buyer and Merger Sub under this Agreement shall terminate and each party shall pay its own costs and expenses as provided in Paragraph 7.05.

**9.02. Unilateral Termination.** At any time prior to the Closing, this Agreement may be terminated by either BBI or by Buyer, only upon written notice to the other parties in the manner provided in Paragraph 11.05 and under the circumstances described below, *provided*, that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement.

(a) **Termination by Buyer.** This Agreement may be terminated by Buyer by action of its Board of Directors or Executive Committee:

(i) if BBI or Biscayne shall have in any material respect violated or failed to fully perform or comply with any of its obligations, covenants or agreements contained in Articles V or VII herein, to the extent that such obligations, covenants or agreements were required to be complied with or performed at or prior to the time when Buyer gives notice of such termination;

(ii) if there shall have occurred any BBI Material Change, or any change, event or development shall have occurred, or any condition or circumstance exists, which, individually or in the aggregate, with the lapse of time or otherwise, is reasonably likely to cause, create or result in any BBI Material Change;

(iii) if (A) any of BBI's or Biscayne's representations or warranties contained in Paragraphs 3.01(a), 3.01(b), 3.02, 3.05, 3.06, 3.07, 3.11, 3.13(a), 3.29, 3.32, 3.35 or 3.37 shall have been false or misleading in any respect as of the date when they are deemed to have been made, or would have been false or misleading in any respect except for the fact that the representation or warranty was limited to or qualified based on the Knowledge of BBI, or (B) (1) any of BBI's or Biscayne's other representations or warranties contained in Article III or in any other certificate or writing delivered by either of them to Buyer pursuant to this Agreement shall have been false or misleading in any material respect as of the date when they are deemed to have been made, or would have been false or misleading in any material respect except for the fact that the representation or warranty was limited to or qualified based on the Knowledge of BBI, or (2) there shall have occurred any event or development, or there exists any condition or circumstance, which, individually or in the aggregate, has caused or, with the lapse of time or otherwise is reasonably likely to cause, any such representation or warranty to become false or misleading in any material respect except for the fact that the representation or warranty was limited to or qualified based on the Knowledge of BBI;

(iv) if the holders of BBI Common Stock do not approve this Agreement and the Merger at the BBI Shareholders' Meeting, as it may be adjourned as provided in Paragraph 5.01(a);

(v) if for the reasons and to the extent permitted by Paragraph 5.01(c), (A) BBI's Board of Directors does not distribute a proxy statement to BBI's shareholders indicating that BBI's Board of Directors considers the Merger to be advisable and in the best interests of BBI and its shareholders and that the Board recommends that BBI's shareholders vote for approval of this Agreement and the Merger, or (B) after having made such a recommendation in the Proxy Statement distributed to BBI's shareholders, the Board withdraws, qualifies or revises that recommendation in any material respect, and/or (C) BBI's Board of Directors elects to not submit this Agreement to a vote of BBI's shareholders;

(vi) if, notwithstanding Buyer's satisfaction of its obligations under this Agreement, the Merger shall not have become effective on or before June 15, 2019 or such later date as shall be mutually agreed upon in writing by BBI and Buyer; or

(vii) if shareholders of BBI who hold, in the aggregate, more than 5% of the outstanding shares of BBI Common Stock give notice of their intent to exercise Dissenters' Rights.

Any termination of the Agreement under this Paragraph 9.02(a) must be approved by Buyer's Board of Directors or its Executive Committee, and any such termination shall have the effect of terminating the Agreement as to both Buyer and Merger Sub. However, before Buyer may terminate this Agreement for the reason specified in Subparagraph (iii)(B)(2) of this Paragraph 9.02(a), it shall give written notice to BBI in the manner provided in Paragraph 11.05 stating its intent to terminate and describing the specific condition or circumstances giving rise to its right to so terminate. Such termination by Buyer shall not become effective if, within thirty (30) days following the giving of such notice or such additional time as Buyer may allow in its discretion, BBI or Biscayne shall eliminate such condition or circumstances to the reasonable satisfaction of Buyer and without cost or expense to Buyer and at an aggregate cost or expense to the BBI Companies with respect to all such conditions or circumstances that would not reasonably be expected to cause, create or result in a BBI Material Change. In the event BBI and/or Biscayne cannot or does not eliminate such condition or circumstances, as provided above, within such cure period, Buyer may give a further written notice to BBI in the manner provided in Paragraph 11.05 stating that BBI and Biscayne have failed to satisfactorily eliminate such

condition or circumstances and that Buyer terminates the Agreement. Termination of this Agreement by Buyer shall be effective upon its giving of such further written notice to BBI.

(b) **Termination by BBI.** This Agreement may be terminated by BBI by action of BBI's Board of Directors:

(i) if Buyer shall have in any material respect violated or failed to fully perform or comply with any of its obligations, covenants or agreements contained in Articles VI or VII herein, to the extent that such obligations, covenants or agreements were required to be complied with or performed at or prior to the time when BBI gives notice of such termination;

(ii) if (A) any of Buyer's representations and warranties contained in Article V or in any other certificate or writing delivered by it to BBI pursuant to this Agreement shall have been false or misleading in any material respect as of the date when they are deemed to have been made, or would have been false or misleading in any material respect except for the fact that the representation or warranty was limited to or qualified based on the Knowledge of Buyer, or (B) there shall have occurred any event or development, or there exists any condition or circumstance, which has caused or, with the lapse of time or otherwise is reasonably likely to cause, any such representations or warranties to become false or misleading in any material respect except for the fact that the representation or warranty was limited to or qualified based on the Knowledge of Buyer, and, in the case of either (A) or (B), if the facts, event, development, condition or circumstance causing, or which is reasonably likely to cause, Buyer's representation or warranty to be or become false or misleading have caused Buyer to be unable to consummate the Merger;

(iii) if, notwithstanding BBI's satisfaction of its obligations under Paragraphs 5.01(a), 5.01(b), 5.01(c) and 7.02, the holders of BBI Common Stock do not approve this Agreement and the Merger at the BBI Shareholders' Meeting, as it may be adjourned as provided in Paragraph 5.01(a);

(iv) if, notwithstanding BBI's and Biscayne's satisfaction of their obligations under this Agreement, the Merger shall not have become effective on or before June 15, 2019, or such later date as shall be mutually agreed upon in writing by BBI and Buyer;

(v) in the event that BBI's Board of Directors determines in good faith, after consultation with and receipt of the advice of its outside counsel and financial advisers, that in light of a "Superior Proposal" (as defined below) it is necessary to terminate this Agreement in order to comply with its fiduciary duties to BBI and to BBI's shareholders under applicable Law; *provided*, that BBI's Board of Directors may terminate this Agreement pursuant to this Paragraph 9.02(b)(v) only if there has been no violation of Paragraph 5.02(l) and it concurrently enters into an Acquisition Agreement related to a Superior Proposal; and, *provided further*, that this Agreement may be terminated pursuant to this Paragraph 9.02(b)(v) only after the fifth Business Day following Buyer's receipt of written notice advising Buyer that BBI's Board of Directors is prepared to accept a Superior Proposal, and only if, during such five-day period, if Buyer so elects, BBI and its advisers shall have negotiated in good faith with Buyer to make such adjustments in the terms and conditions of this Agreement as would enable BBI, Biscayne and Buyer to proceed with the transactions contemplated herein on such adjusted terms.

"Superior Proposal" means an unsolicited, bona fide, written offer made by a third party to consummate an Acquisition Proposal that BBI's Board of Directors

determines, in good faith, after consulting with its outside legal counsel and its financial adviser, would, if consummated, result in a transaction that is materially more favorable to BBI's shareholders than the Merger from a financial standpoint.

Any termination of the Agreement under this Paragraph 9.02(b) must be approved by BBI's Board of Directors, and any such termination shall have the effect of terminating the Agreement as to both BBI and Biscayne. However, before BBI may terminate this Agreement for the reason specified in Subparagraph (ii)(B) of this Paragraph 9.02(b), BBI shall give written notice to Buyer in the manner provided in Paragraph 11.05 stating its intent to terminate and describing the specific condition or circumstances giving rise to its right to so terminate. Such termination by BBI shall not become effective if, within 30 days following the giving of such notice or such additional time as BBI may allow in its discretion, Buyer shall eliminate such condition or circumstances to the reasonable satisfaction of BBI. In the event Buyer cannot or does not eliminate such condition or circumstances, as provided above, within such cure period, BBI may give a further written notice to Buyer in the manner provided in Paragraph 11.05 stating that Buyer has failed to satisfactorily eliminate such condition or circumstances and that BBI terminates the Agreement. Termination of this Agreement by BBI shall be effective upon BBI's giving of such further written notice to Buyer.

#### **9.03. *Breach; Remedies; Expense Reimbursement.***

(a) ***Reimbursement by BBI and Biscayne.*** If this Agreement is terminated by (i) Buyer pursuant to Paragraph 9.02(a)(i), 9.02(a)(iii), 9.02(a)(iv) (and, in the case of Paragraph 9.02(a)(iv), under circumstances in which BBI has failed to comply in all material respects with its obligations under Paragraph 5.01(a), 5.01(b) or 5.01(c)), Paragraph 9.02(a)(v), or Paragraph 9.02(a)(vi) (where the failure to complete the Merger by the date specified in that Paragraph was within the reasonable control of BBI or Biscayne), or (ii) by BBI pursuant to Paragraph 9.02(b)(iv) (where failure to complete the Merger by the date specified in that Paragraph was within the reasonable control of BBI or Biscayne), or Paragraph 9.02(b)(v), then BBI and Biscayne each shall pay its own out-of-pocket expenses as provided in Paragraph 7.05 above and, notwithstanding the provisions of that Paragraph, BBI and Biscayne shall be jointly and severally obligated to pay to Buyer an amount equal to Buyer's aggregate documented out-of-pocket expenses actually incurred by it in negotiating and preparing this Agreement, performing due diligence, and otherwise in connection with or attempting to consummate the transactions described herein, but in no event more than \$350,000.

Subject to BBI's and Biscayne's obligation to reimburse Buyer's out-of-pocket expenses as described above and to their obligation to pay the termination fees described in Paragraph 9.04(a) below, and subject to Subparagraph (c) below, in the event of a breach by BBI or Biscayne of any of its representations or warranties, or its failure to perform or violation of any of its obligations, agreements or covenants contained in this Agreement, Buyer's sole right and remedy shall be to terminate this Agreement prior to the Effective Time as provided in Paragraph 9.02(a) above.

(b) ***Reimbursement by Buyer.*** If this Agreement is terminated by BBI pursuant to Paragraph 9.02(b)(i), 9.02(b)(ii), or 9.02(b)(iv) (where the failure to complete the Merger by the date specified in that Paragraph was within the reasonable control of Buyer), or by Buyer pursuant to Paragraph 9.01(a)(vi) (where the failure to complete the Merger by the date specified in that Paragraph was within the reasonable control of Buyer), then Buyer shall pay its own out-of-pocket expenses as provided in Paragraph 7.05 above and, notwithstanding the provisions of that Paragraph, Buyer shall be obligated to pay to BBI and Biscayne an amount equal to their respective documented out-of-pocket expenses held by FCB following the First Merger), and all expenses incurred by Buyer in negotiating and preparing this Agreement, performing due diligence, and otherwise in connection with or attempting to consummate the transactions described herein, but in no event more than an aggregate of \$350,000 to both of them.



Subject to Buyer's obligation to reimburse BBI's and Biscayne's out-of-pocket expenses as described above, and subject to Subparagraph (c) below, in the event of a breach by Buyer of any of its representations or warranties, or its failure to perform or violation of any of its obligations, agreements or covenants contained in this Agreement, BBI's and Biscayne's sole right and remedy shall be to terminate this Agreement prior to the Effective Time as provided in Paragraph 9.02(b) above.

**(c) Enforcement of Certain Agreements Following Termination.**

Notwithstanding anything contained in this Agreement to the contrary, either party shall be entitled to commence a suit at Law or in equity for the purpose of (i) obtaining appropriate relief in the event of a violation, or imminent violation, by the other party of Paragraph 7.04 above, or (ii) enforcing the other party's indemnification obligations under Article X of this Agreement.

**9.04. Termination Fees.** Notwithstanding anything contained in this Agreement to the contrary, and in addition to their obligation to reimburse Buyer for its out-of-pocket expenses under certain circumstances as described in Paragraph 9.03(a) above, BBI and Biscayne will be obligated, jointly and severally, to pay a termination fee to Buyer in the amount of \$3,500,000 if:

(a) BBI terminates this Agreement pursuant to Paragraph 9.02(b)(v); or

(b) either BBI or Buyer terminates this Agreement for any reason following a breach by any of the BBI Companies of their obligations under Paragraph 5.02(1); or

(c) (i) (A) Buyer terminates this Agreement pursuant to Paragraph 9.02(a)(i) where BBI's or Biscayne's failure to fully perform any of its obligations, covenants or agreements that gives rise to such termination was for reasons reasonably within its control, and at any time after the date of this Agreement and prior to the date of such termination an Acquisition Proposal has been communicated or otherwise made known to the senior management or Board of Directors of BBI or Biscayne; or (B) (1) Buyer terminates this Agreement pursuant to Paragraph 9.02(a)(iv), or (2) BBI terminates this Agreement pursuant to Paragraph 9.02(b)(iii), and in either such case an Acquisition Proposal has been communicated or otherwise made known to the senior management or Board of Directors of BBI or Biscayne at any time after the date of this Agreement and prior to the date of the BBI Shareholders' Meeting; or (C) Buyer terminates this Agreement pursuant to Paragraph 9.02(a)(v); or (D) Buyer terminates this Agreement pursuant to Paragraph 9.02(a)(vi), or BBI terminates this Agreement pursuant to Paragraph 9.02(b)(iv), in either case under circumstances in which the reason the Merger has not become effective on or before the date specified in those Subparagraphs was within the reasonable control of BBI or Biscayne; and if, (ii) in the case of any termination described in this Paragraph 9.04(c) above, if at any time after the date of this Agreement and before the date twelve (12) months after the date of such termination, (A) BBI or Biscayne shall have executed, entered into or otherwise become bound by an Acquisition Agreement, or (B) either of their Boards of Directors has accepted, approved, or recommended to BBI's shareholders any Acquisition Proposal.

**9.05. Method and Timing of Payments.** Any payment for reimbursement of expenses due from BBI and Biscayne to Buyer under Paragraph 9.03(a), or from Buyer to BBI and Biscayne under Paragraph 9.03(b), shall be made by wire transfer of immediately available funds within two Business Days following the later of the date of termination of the Agreement giving rise to that payment and the date on which the paying party receives documentation of the expenses to be reimbursed. Any payment of a termination fee due from BBI and Biscayne to Buyer under Paragraph 9.04 shall be made by wire transfer of immediately available funds within two Business Days following the later of the date of termination of the Agreement and the date of the event that gives rise to the obligation to pay the termination fee.

In the event that BBI or Biscayne shall fail to pay any such amount owed by them to Buyer, or Buyer shall fail to pay any such amount owed by it to BBI and Biscayne, as described above when due, then it shall be obligated to pay such amount plus the costs and expenses actually incurred by the party entitled to receive such amount (including, without limitation, fees and expenses of counsel) in connection with the collection of such amount and the enforcement of Paragraphs 9.03, 9.04 and 9.05, together with interest on such unpaid amount and costs and expenses commencing on the date that the amount became due and computed at the maximum rate allowed by Law.

## ARTICLE X—INDEMNIFICATION

### 10.01. Indemnification Following Termination of Agreement.

(a) *By BBI and Biscayne.* BBI and Biscayne each agree, jointly and severally, that in the event this Agreement is terminated for any reason and the Merger is not consummated, it will indemnify, hold harmless and defend Buyer and Merger Sub, and their respective officers, directors and attorneys from and against any and all claims, disputes, demands, causes of action, suits or proceedings by any third party (including any Regulatory Authority), together with all Losses or Liabilities in connection therewith, whether known or unknown, and whether now existing or hereafter arising, which may be threatened against, incurred, undertaken, received or paid by them:

(i) in connection with or which arise out of, result from, or are based upon (A) the operations or business transactions of any of the BBI Companies or their relationship with any of their employees, or (B) the failure of any of the BBI Companies to comply with any statute or regulation of any federal, state or local government or agency (or any political subdivision thereof) in connection with the transactions described in this Agreement:

(ii) in connection with or which arise out of, result from, or are based upon any fact, condition or circumstance that constitutes a breach by BBI or Biscayne of, or any inaccuracy, incompleteness or inadequacy in, any of its representations or warranties under or in connection with this Agreement, or any failure of BBI or Biscayne to perform any of its covenants, agreements or obligations under or in connection with this Agreement; or

(iii) in connection with or which arise out of, result from, or are based upon any information provided by BBI or Biscayne which is included in the Proxy Statement and which information causes the Proxy Statement at the time of its mailing to BBI's shareholders to contain any untrue statement of a material fact or to omit any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not false or misleading.

(b) *By Buyer.* Buyer agrees that, in the event this Agreement is terminated for any reason and the Merger is not consummated, it will indemnify, hold harmless and defend BBI and Biscayne and their respective officers, directors and attorneys from and against any and all claims, disputes, demands, causes of action, suits, or proceedings of any third party (including any Regulatory Authority), together with all together with all Losses or Liabilities in connection therewith, whether known or unknown, and whether now existing or hereafter arising, which may be threatened against, incurred, undertaken, received or paid by them:

(i) in connection with or which arise out of, result from, or are based upon (A) Buyer's operations or business transactions or its relationship with any of its employees, or (B) Buyer's failure to comply with any statute or regulation of any federal, state or

local government or agency (or any political subdivision thereof) in connection with the transactions described in this Agreement:

(ii) in connection with or which arise out of, result from, or are based upon any fact, condition or circumstance that constitutes a breach by Buyer of, or any inaccuracy, incompleteness or inadequacy in, any of its representations or warranties under or in connection with this Agreement, or any failure of Buyer to perform any of its covenants, agreements or obligations under or in connection with this Agreement; or,

(iii) in connection with or which arise out of, result from, or are based upon any information provided by Buyer in writing which is included in the Proxy Statement and which information causes the Proxy Statement at the time of its mailing to BBI's shareholders to contain any untrue statement of a material fact or to omit any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not false or misleading.

(c) *Procedure for Claiming Indemnification.* If any matter subject to indemnification under Paragraph 10.01 arises in the form of a claim (herein referred to as a "Third Party Claim") against BBI, Biscayne, Buyer, Merger Sub, or their respective successors and assigns, or any of their respective subsidiary entities, officers, directors and attorneys (collectively, "Indemnitees"), the Indemnitee promptly shall give notice and details thereof, including copies of all pleadings and pertinent documents, to the party obligated for indemnification hereunder (the "Indemnitor"). Within 15 days of such notice, the Indemnitor either (i) shall pay the Third Party Claim either in full or upon agreed compromise, or (ii) shall notify the applicable Indemnitee that the Indemnitor disputes the Third Party Claim and intends to defend against it, and thereafter shall so defend and pay any adverse final judgment or award in regard thereto. Such defense shall be controlled by the Indemnitor and the cost of such defense shall be borne by it, except that the Indemnitee shall have the right to participate in such defense at its own expense and the Indemnitor shall have no right in connection with any such defense or the resolution of any such Third Party Claim to impose any cost, restriction, limitation or condition of any kind that compromises the Indemnitee hereunder. In the case of an Indemnitee that is an officer, director or attorney of a party to this Agreement, then, as a condition to the indemnification, that party must cooperate in all reasonable respects in the defense of any such Third Party Claim, including making personnel, books and records relevant to the Third Party Claim available to the Indemnitor without charge therefor except for out-of-pocket expenses. If the Indemnitor fails to take action within fifteen (15) days as provided above or, having taken such action, thereafter fails diligently to defend and resolve the Third Party Claim, the Indemnitee shall have the right to pay, compromise or defend the Third Party Claim and to assert the indemnification provisions hereof. The Indemnitee also shall have the right, exercisable in good faith, to take such action as may be necessary to avoid a default prior to the assumption of the defense of the Third Party Claim by the Indemnitor.

## ARTICLE XI—MISCELLANEOUS PROVISIONS

**11.01. Survival of Certain Rights and Obligations Following Closing or Termination.** Following the Effective Time, none of the representations, warranties or agreements of BBI, Biscayne or Buyer contained in this Agreement shall survive or remain in effect, with the exception of those agreements to be performed in whole or in part at or after the Effective Time, and, subject to Paragraph 11.11, no party shall have any right after the Effective Time to recover damages or any other relief from any other party to this Agreement by reason of any breach of representation or warranty, any nonfulfillment or nonperformance of any agreement contained herein, or otherwise. In the event of termination of this Agreement, whether by the mutual agreement of BBI and Buyer as provided in Paragraph 9.01, or by either Buyer or BBI as provided in Paragraph 9.02, this Agreement shall forthwith

become void and have no effect, except that, the covenants, agreements, rights and obligations of the parties pursuant to Paragraphs 6.04, 7.04, 7.05, 9.03, 9.04, 9.05, Article X and this Article XI shall survive and remain in full force and effect in accordance with their terms following any termination of this Agreement pursuant to Article IX.

**11.02. Inspection.** Neither the right of BBI or Biscayne under this Agreement to investigate or inspect the premises, books, records, files and Assets or information of Buyer, nor the right of Buyer to investigate or inspect the premises, books, records, files and Assets or information of any of the BBI Companies, in any way shall establish any presumption that BBI, Biscayne or Buyer should have conducted any investigation or that such right has been exercised by any of them or their agents, representatives or others. Any investigations or inspections actually made by BBI, Biscayne or Buyer, or by their respective agents, representatives or others, prior to the date of this Agreement or otherwise prior to the Effective Time shall not be deemed in any way in derogation or limitation of the covenants, representations and warranties made by or on behalf of the other parties in this Agreement. \

**11.03. Waiver.** Prior to or at the Effective Time, any term or condition of this Agreement may be waived (except as to matters of regulatory approvals and other approvals required by Law), either in whole or in part, at any time by the party which is, and whose shareholders are, entitled to the benefits thereof; and, any party shall have the right to waive any default in the performance of any term of this Agreement by any other party, to waive or extend the time for compliance or fulfillment by any other party of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the waiving party's obligations under this Agreement (other than any condition which, if not satisfied, would result in the violation of any Law); *provided*, that any such waiver shall be effective only upon a determination by the waiving party (through action of its Board of Directors or, in the case of Buyer, by its Board of Directors) that such waiver would not adversely affect the interests of the waiving party or its shareholders; and, *provided further*, that no waiver of any term or condition of this Agreement by any party shall be effective unless such waiver is in writing and signed by the waiving party, nor shall any such waiver be construed to be a waiver of any succeeding breach of the same term or condition or a waiver of any other or different term or condition.

The failure of any party at any time or times to exercise any right or power hereunder, or to require performance by any other party of its obligations under any provision hereof, shall in no manner affect the right of such Party at a later time to enforce the same or any other provision of this Agreement. No custom or practice at variance with any terms hereof shall constitute a waiver of the right of any party to demand full and complete compliance with such terms, and no waiver of any condition or of the breach of any term contained in this Agreement in one or more instances shall be deemed to be or construed as a further or continuing waiver of such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement.

**11.04. Amendment.** To the extent permitted by Law, this Agreement may be amended, modified or supplemented at any time or from time to time prior to the Effective Time, and either before or after its approval by the shareholders of BBI, by a writing approved by, or pursuant to authority granted by, the Board of Directors of BBI, and the Board of Directors of Buyer, and executed in the same manner as this Agreement; *provided*, that, except with the further approval of BBI's shareholders of that change or as otherwise provided herein, following approval of this Agreement by BBI's shareholders no change may be made in the amount of consideration into which each share of BBI Common Stock will be converted or that would be required by applicable Law to be approved by BBI's shareholders.

**11.05. Notices.** All notices and other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been duly given and sufficient if delivered by hand, by recognized overnight courier or carrier, or by postage prepaid U.S. certified mail, return receipt requested, in each case addressed as follows (or to such other address as shall have been communicated

by like notice to the party giving the notice), and shall be deemed to have been given as of the date so delivered:

**If to BBI or Biscayne, to:**

Biscayne Bancshares, Inc.  
2601 S. Bayshore Drive, 6th Floor  
Coconut Grove, Florida 33133  
Attn: Thomas D. Lumpkin, II  
Chairman of the Board  
Tel. No.: (305) 447-5050

**With a copy (which shall not constitute notice) to:**

John P. Greeley,  
Smith Mackinnon, PA  
255 South Orange Avenue, Suite 1200  
Orlando, Florida 32801  
Tel. No.: (407) 843-7300

**If to Buyer, to:**

First-Citizens Bank & Trust Company  
4300 Six Forks Road  
Raleigh, North Carolina 27609  
Attn: Elizabeth S. Ostendorf  
Vice President and Senior Counsel  
Tel. No.: (919) 716-2206

**With a copy (which shall not constitute notice) to:**

William R. Lathan, Jr.  
Ward and Smith, P.A.  
1001 College Court  
New Bern, North Carolina 28562  
Tel. No.: (252) 672-5458

**11.06. Further Assurance.** BBI, Biscayne and Buyer each agrees to furnish to each other such further assurances with respect to the matters contemplated in this Agreement and their respective agreements, covenants, representations and warranties contained herein as such other party may reasonably request.

**11.07. Interpretation.**

(a) Any reference in this Agreement to Articles, Paragraphs, Subparagraphs, exhibits or schedules, shall, unless otherwise indicated, be to an Article or Paragraph of, or exhibit or schedule to, this Agreement, and any capitalized terms used in any exhibit, schedule or a Disclosure Schedule to this Agreement, but not otherwise defined therein, shall have the meaning set forth in this Agreement.

(b) All references to "the transactions contemplated by" or "the transactions described in" this Agreement" (or similar phrases) include the Merger, the Subsequent Transactions, and all other transactions described in or contemplated by this Agreement.

(c) The table of contents and all headings and captions of the Articles, Paragraphs and Subparagraphs of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(d) As used in this Agreement, the masculine gender shall include the feminine and neuter, the singular number shall include the plural, and *vice versa*, whenever such meanings are appropriate, and all pronouns and any variations thereof shall be considered to refer to the masculine, feminine or neuter, singular or plural, as the context may require.

(e) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(f) The word “herein” shall, unless the context otherwise indicates, be deemed to refer to this Agreement in its entirety.

(g) The word “or” shall not be exclusive and “any” means “any and all.”

(h) The words “hereby,” “herein,” “hereof,” “hereunder” and similar terms refer to this Agreement as a whole and not to any specific Paragraph.

(i) If a word or phrase is defined in this Agreement, the other grammatical forms of such word or phrase shall have a corresponding meaning.

(j) Reference to any Person includes such Person’s successors and assigns, if applicable, but only if such successors or assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in another capacity.

(k) A reference to this Agreement or to any other document, agreement or instrument also refers to all addenda, exhibits or schedules hereto or thereto, and a reference to any “copy” or “copies” of this Agreement or to any other document, agreement or instrument means a copy or copies that are complete and correct.

(l) Unless otherwise specified in this Agreement, all accounting terms used in this Agreement will be interpreted, and all accounting determinations under this Agreement will be made, in accordance with GAAP.

(m) Any contract, agreement or arrangement, or any Law, defined or referred to herein or in any contract, agreement or arrangement that is referred to herein means such contract, agreement, arrangement or Law as from time to time amended, modified or supplemented, including, in the case of a contract, agreement or arrangement, by waiver or consent and, in the case of Law, by succession of comparable successor Law.

(n) References to a document or other information that has been “made available” by one party to another party means a document or other information that was (i) provided (whether by physical or electronic delivery) by one party or its representatives to the other applicable party or its representatives at least two Business Days prior to the date hereof, (ii) posted, on a continual basis without subsequent modification, by a party at least two Business Days prior to the date hereof in a virtual data room to which the other party had full access, or (iii) filed by a party with the SEC and publicly available on the SEC’s EDGAR system at least two Business Days prior to the date hereof.

(o) This Agreement shall not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any applicable Law.

(p) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party, whether under any rule of construction or otherwise. No party to this Agreement shall be considered the draftsman. The parties acknowledge and agree that this Agreement has been reviewed, negotiated, and accepted by all parties and their attorneys and other advisers and, unless otherwise defined herein, the words used shall be construed and interpreted according to their ordinary meaning so as fairly to accomplish the purposes and intentions of all parties.

**11.08. Entire Agreement.** This Agreement (including any Disclosure Schedules, and any other schedules and exhibits attached hereto, and any documents incorporated herein by reference) contains the entire agreement of the parties with respect to the transactions described herein and

supersedes any and all other prior oral or written agreements, arrangements or understandings between or among the parties, and there are no representations or inducements by or to, or any agreements between, any of the parties hereto other than those contained herein in writing. Except for the representations and warranties made by BBI and Biscayne in Article III of this Agreement, and the representations and warranties of Buyer made in Article IV of this Agreement, neither BBI, Biscayne nor any other person makes any further express or implied representation or warranty with respect to BBI or Biscayne, and Buyer does not make any further express or implied representation or warranty with respect to Buyer or Merger Sub, or their respective businesses, operations, Assets, Liabilities, conditions (financial or otherwise) or prospects. BBI, Biscayne and Buyer hereby disclaim any such other representations or warranties. BBI and Biscayne acknowledge and agree that neither Buyer nor any other person has made or is making any express or implied representation or warranty other than those contained in Article IV. Buyer acknowledges and agrees that neither BBI, Biscayne nor any other person has made or is making any express or implied representation or warranty other than those contained in Article III.

**11.09. Severability of Provisions.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**11.10. Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by any party hereto (whether by operation of Law or otherwise) except with the prior written consent of the other parties, and any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by each of the parties and their respective successors and assigns.

**11.11. Third-Party Beneficiaries.**

(a) Except as expressly provided in Paragraphs 6.04 and 7.06 and Article X, and, if the Effective Time occurs, the right of holders of BBI Common Stock to receive the Per Share Merger Consideration and the right of holders of BBI Stock Options to receive the Option Payments pursuant to this Agreement, nothing in this Agreement or in any documents or instruments referred to herein, express or implied, is intended to confer upon any Person, other than the parties or their respective successors, any rights, remedies, obligations, or Liabilities under or by reason of this Agreement. No provisions of this Agreement modifies or amends or creates any Employment Contracts or Plans of or with Buyer, and no third party shall be entitled to enforce any provision of this Agreement on the grounds that it is an amendment to, or a creation of, an Employment Contract or Plan. This provision shall not prevent the parties to this Agreement from enforcing any provision of this Agreement. If a Person not entitled to enforce this Agreement brings a lawsuit or other action to enforce any provision in this Agreement as an amendment to, or creation of an Employment Contract or Plan, and that provision is construed to be such an amendment or creation, that provision shall lapse retroactively, thereby precluding it from having any effect.

(b) The representations and warranties of the parties in this Agreement are the product of negotiations among the parties and are for the sole benefit of the parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties in accordance herewith without notice or Liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties of risks associated with particular matters regardless of the Knowledge of any of the parties. Consequently, Persons other than the parties may not

rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date. Notwithstanding any other provision hereof to the contrary, no consent, approval or agreement of any third party beneficiary will be required to amend, modify to waive any provision of this Agreement.

**11.12. Counterparts; Electronic Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or the consummation of the Merger or other transactions contemplated herein, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a “.pdf” format data file, shall be treated in all manner and respects as an original agreement or instrument and shall, to the full extent permitted by applicable Law, be considered to have the same binding legal effect and be enforceable and admissible to the same extent as original handwritten signatures delivered in person. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment or waiver hereto or any agreement or instrument entered into in connection with this Agreement or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a “.pdf” format data file as a defense to the formation of a contract and each Party hereto forever waives any such defense.

**11.13. Governing Law; Jurisdiction and Venue.** Except to the extent the Law of another state applies as a matter of Law, this Agreement is made in and shall be construed and enforced in accordance with the Laws of North Carolina applicable to contracts made and wholly performed within such state, without regard to any applicable conflicts-of-law principles, and to applicable Laws of the United States; *provided*, that it is acknowledged that the Law applicable to the fiduciary obligations of the parties’ respective Boards of Directors shall not be determined pursuant to this Paragraph 11.13. The Parties agree that any Litigation brought by either party to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated herein shall be brought in any federal court located in Raleigh, North Carolina. Each of the parties submits to the jurisdiction of any such Litigation seeking to enforce any provision of, or based on any matter arising out of, or in connection with, this Agreement or the transactions contemplated herein and hereby irrevocably waives the benefit of jurisdiction derived from present or future domicile or otherwise in such Litigation. Each party irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such Litigation brought in any such court has been brought in an inconvenient forum. In any dispute or action between the parties arising out of this Agreement, including any Litigation, arbitration, and appellate proceedings (and efforts to enforce the judgement, award or other disposition of any of the same), the prevailing party shall be entitled to have and recover from the other party all reasonable fees, costs and expenses incurred in connection with such dispute or action (including reasonable attorneys’ fees).

**11.14. Confidential Supervisory Information.** Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement is intended, or shall be deemed, to obligate BBI or Biscayne to disclose to Buyer or any other Person, or to obligate Buyer to disclose to BBI or Biscayne or any other Person, any confidential supervisory information or materials if such disclosure would be unlawful or prohibited by the disclosing party’s respective Regulatory Authorities.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]



**IN WITNESS WHEREOF**, BBI, Biscayne, Buyer and Merger Sub each has caused this Agreement to be executed in its name by its duly authorized officer in each case as of the date first above written.

**BISCAYNE BANCSHARES, INC.**

By: /S/ THOMAS D. LUMPKIN, II  
Thomas D. Lumpkin, II  
Chairman of the Board

**BISCAYNE BANK**

By: /S/ THOMAS D. LUMPKIN, II  
Thomas D. Lumpkin, II  
Chairman of the Board

**IN WITNESS WHEREOF**, BBI, Biscayne, Buyer and Merger Sub each has caused this Agreement to be executed in its name by its duly authorized officer in each case as of the date first above written.

**FIRST-CITIZENS BANK & TRUST COMPANY**

By: /S/ CRAIG L. NIX  
Craig L. Nix  
Chief Financial Officer

**FC MERGER SUBSIDIARY V, INC.**

By: /S/ CRAIG L. NIX  
Craig L. Nix  
President and Chief Executive Officer

SUPPORT AGREEMENT

**THIS SUPPORT AGREEMENT** (this "Agreement"), is made as of this \_\_\_\_ day of November, 2018, by and among the undersigned individuals (each, a "Shareholder" and collectively, the "Shareholders"), who each serves as a director, officer and/or shareholder of **BISCAYNE BANCSHARES, INC.**, a Florida corporation ("BBI"), in each Shareholder's capacity as a shareholder of BBI, and **FIRST-CITIZENS BANK & TRUST COMPANY** ("Buyer"). All capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings assigned to them in the "Merger Agreement" as defined below.

**WHEREAS**, Buyer and BBI have entered into an Agreement and Plan of Merger, dated as of the date hereof (the "Merger Agreement"), pursuant to which BBI and its wholly-owned subsidiary, Biscayne Bank ("Biscayne"), will be acquired by Buyer and all of the outstanding shares of BBI Common Stock will be exchanged for and converted into the right to receive cash from Buyer in accordance with the terms of the Merger Agreement; and

**WHEREAS**, each Shareholder owns, beneficially or of record, and has the sole or shared power to vote or to direct the voting of, the number of shares of BBI Common Stock listed next to his or her name on Exhibit A to this Agreement and, in connection with the transactions described in the Merger Agreement (the "Merger"), he or she will receive cash for those shares in the manner provided in the Merger Agreement; and

**WHEREAS**, because of the substantial expense that Buyer will incur in connection with the Merger, before executing the Merger Agreement Buyer desires to be assured of each Shareholder's support for the Merger in his or her capacity as a shareholder of BBI; and

**WHEREAS**, each Shareholder desires that Buyer enter into the Merger Agreement, and Buyer is willing to do so on the condition, among others, that each of BBI's directors and certain of its officers and shareholders, including the Shareholders, concurrently agree to vote or direct the voting of the Covered Shares (as defined below) for approval of the Merger Agreement and to the other covenants contained herein.

**NOW, THEREFORE**, as an inducement to Buyer to execute and deliver the Merger Agreement, and in consideration of the Merger Agreement and the cash consideration to be received by each Shareholder for his or her Covered Shares (as defined below) and the premises and other good and valuable consideration, and intending to be legally bound hereby, each Shareholder agrees as described below.

1. ***Representations and Warranties of Shareholder.*** Each Shareholder represents and warrants to Buyer that (a) he or she is the record and/or beneficial owner, and possesses the sole or shared power to vote or direct the voting, of all of the shares of BBI Common Stock listed next to his or her name on Exhibit A, (b) he or she has full right, power and authority to enter into, deliver and perform this Agreement, (c) he or she has not granted any proxy or voting rights to any other person with respect to any of the shares listed on Exhibit A, and (d) this Agreement has been duly executed and delivered by him or her, constitutes his or her legal, valid and binding obligation, and is enforceable against him or her in accordance with its terms.

2. ***Agreement to Vote.*** Exhibit A to this Agreement lists all shares of BBI Common Stock as to which each Shareholder has sole power to vote or to direct the voting ("Sole Voting Shares"), and all shares of BBI Common Stock as to which each Shareholder has shared power to vote or to direct the

voting ("Shared Voting Shares"), in each case excluding shares of BBI Common Stock also listed on Exhibit A which are held by each Shareholder, or with respect to which each Shareholder has sole or shared voting power, solely as a trustee, guardian, custodian, executor, or otherwise in a fiduciary capacity for persons other than himself or herself ("Fiduciary Shares"). The Sole Voting Shares and Shared Voting Shares listed for each Shareholder are sometimes referred to in this Agreement as that Shareholder's "Covered Shares."

At any meeting of BBI's shareholders, including any adjournment or postponement thereof, at which the Merger Agreement or any amendment thereto is submitted for approval (the "BBI Shareholder Meeting"), each Shareholder agrees (a) to cause his or her Sole Voting Shares to be represented at the meeting, either in person or by proxy, and to vote his or her Sole Voting Shares, or cause or direct those shares to be voted, for approval of the Merger Agreement or amendment, and (b) to the full extent of his or her power, authority and ability, to cause his or her Shared Voting Shares to be represented at the meeting, either in person or by proxy, and to vote his or her Shared Voting Shares, or cause or direct those shares to be voted, for approval of the Merger Agreement or amendment. This Agreement shall not apply to, and Shareholders shall not be obligated to vote, any of their respective Fiduciary Shares.

**3. Additional Shares.** Notwithstanding anything to the contrary contained herein, this Agreement shall apply to, and each Shareholder's Covered Shares shall include, all shares of BBI Common Stock with respect to which that Shareholder acquires the sole or shared power to vote or to direct the voting during the term of this Agreement other than in a fiduciary capacity as described above.

**4. Other Covenants of Shareholder.**

(a) **Restrictions on Transfer.** Until the earlier of the day following the date of final adjournment of the BBI Shareholder Meeting, or the termination of the Merger Agreement in accordance with its terms, each Shareholder agrees that he or she will not sell, transfer or otherwise dispose of, or encumber, pledge, hypothecate, grant a security interest in, any of his or her Covered Shares, and that he or she will not enter into any agreement, arrangement or understanding (other than an appointment of proxy solicited by BBI for the purpose of voting the Covered Shares in accordance with Section 2 hereof) which would during that term restrict, establish a right of first refusal to, or otherwise relate to, the transfer or voting of any of such Shareholder's Covered Shares. Notwithstanding the foregoing, the following transfers of Covered Shares shall be permitted: (i) transfers by will or operation of law; (ii) transfers pursuant to any pledge agreement, subject to the pledgee agreeing in writing to be bound by the terms of this Agreement, *provided*, however that no action shall be required to be taken to obtain such an agreement from any pledgee with respect to any pledge existing as of the date of this Agreement; (iii) transfers in connection with estate or tax planning or similar purposes, including transfers to relatives, trusts, foundations and charitable organizations, subject to the transferee first agreeing in writing to be bound by the terms of this Agreement; (iv) transfers to one or more other shareholders of BBI who are parties to or bound by a support agreement with Buyer comparable to this Agreement; and (v) such other transfer to which Buyer consents in writing in its sole discretion.

(b) **Other Acquisition Proposals.** Until the earlier of the day following the date of final adjournment of the BBI Shareholders' Meeting, or the termination of the Merger Agreement in accordance with its terms, and to the extent of his or her power and authority, each Shareholder agrees that he or she will not, directly or indirectly: (i) vote or direct or cause to be voted any of his or her Covered Shares in favor of, and he or she will vote, direct or cause all of his or her Covered Shares to be voted against, any Acquisition Agreement (as that term is defined in Section 5.02(I) of the Merger Agreement), other than the Merger Agreement; or (ii) tender or permit the tender of the Covered Shares into any tender or exchange offer, (iii) solicit, or authorize, direct, induce, or encourage any other person, including but not limited to any holder of BBI Common Stock, or any officer, employee or director of

BBI, to solicit, from any third party any inquiries or proposals relating to the disposition of BBI's or Biscayne's business or assets or the business or assets of BBI or Biscayne, or the acquisition of BBI Common Stock, or the merger of BBI or Biscayne with any person other than Buyer, or (iv) except as provided in Section 5.02(l) of the Merger Agreement, provide any such person with information or assistance or negotiate or conduct any discussions with any such person in furtherance of such inquiries or to obtain a proposal.

(c) *Cooperation.* In addition to the specific matters provided for elsewhere herein, each Shareholder agrees to take all action reasonably requested by Buyer to support and to facilitate consummation of the Merger and the other transactions described in or contemplated by the Merger Agreement.

(d) *Certain Events.* Each Shareholder agrees that this Agreement and the obligations hereunder shall attach to his or her Covered Shares and shall be binding upon any person or entity to which legal or beneficial ownership of such Covered Shares shall pass, whether by operation of law or otherwise, including such Shareholder's successors or assigns. In the event of any stock split, stock dividend, merger, exchange, reorganization, recapitalization or other change in the capital structure of BBI affecting the Covered Shares, the number of Covered Shares subject to the terms of this Agreement shall be appropriately adjusted, and this Agreement and the obligations hereunder shall attach to any additional shares issued to or acquired by any Shareholder.

(e) *Waiver of Statutory Appraisal Rights.* Each Shareholder hereby waives all statutory rights of appraisal or to dissent from the Merger that, as a result of the Merger, he or she, as a shareholder of BBI, may have under Florida law with respect to his or her Covered Shares.

5. *Capacity Only as a Stockholder.* This Agreement relates solely to each Shareholder in his or her individual capacity as a shareholder or beneficial owner of his or her Covered Shares and is not in any way intended to affect or prevent the exercise by any Shareholder of his or her responsibilities as a director or officer of BBI. For purposes of clarification, nothing in this Agreement shall prevent, limit or affect any acts or omissions taken by a Shareholder that is also a member of the Board of Directors of BBI or Biscayne in the course of discharging his or her fiduciary duties to BBI or Biscayne in his or her capacity as director, and no such actions or omissions shall be deemed a breach of this Agreement. As of the date of this Agreement, each Shareholder who also serves as a director represents to Buyer that he or she (a) intends to recommend approval of the Merger Agreement to the shareholders of BBI and (b) is not aware of any facts or circumstances existing as of the date of this Agreement that could cause or reasonably be expected to cause the directors of BBI or Biscayne to change such recommendation.

6. *Specific Performance.* Each Shareholder agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by each Shareholder in accordance with their specific terms or were otherwise breached. Buyer shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any Shareholder and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which Buyer is entitled at law or in equity. Each Shareholder waives the posting of any bond or security in connection with any proceeding related thereto.

7. *Termination.* This Agreement shall terminate upon the earlier to occur of: (a) consummation of the Merger, or (b) termination of the Merger Agreement by any of the parties thereto, *provided* that such termination of the Merger Agreement is not in violation of any provision of the Merger Agreement. Upon any such termination, this Agreement shall have no further force or effect and there shall be no further obligation on the part of the Shareholders, *provided*, that nothing in this Section 7 shall relieve any Shareholder from any liability for breach of this Agreement before such termination.

8. **Governing Law.** This Agreement shall be governed in all respects by the law of the State of Florida, without regard to the conflict of laws principles thereof.

9. **Assignment; Successors.** The provisions of this Agreement shall be binding upon and, shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors, assigns, heirs and personal representatives; *provided*, that no Shareholder may transfer or assign any of his or her rights or obligations hereunder without the prior written consent of Buyer.

10. **Scope of Agreement.** The parties hereto acknowledge and agree that this Agreement shall not confer upon Buyer any right or ability to acquire the shares of BBI Common Stock other than in connection with the Merger. The parties hereto acknowledge and agree that this Agreement does not constitute an agreement or understanding of any Shareholder in his/her capacity as a director or officer of BBI but only in his/her capacity as a holder of shares of BBI Common Stock.

11. **Severability.** Any invalidity, illegality or unenforceability of any provision of this Agreement in any jurisdiction shall not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

12. **Amendment, Waiver.** This Agreement may not be modified, amended, altered or supplemented except by an instrument in writing signed on behalf of each of the parties hereto to be bound thereby, which instrument expressly states its intention to amend this Agreement. No provision of this Agreement may be waived, except by an instrument in writing, executed by the waiving party, expressly indicating an intention to effect a waiver. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. **Prevailing Party.** In connection with any action arising out of this Agreement, the prevailing party or parties shall be entitled to recover its reasonable attorneys' fees and costs incurred therein from the non-prevailing party or parties.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, and by different parties in separate counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement, and any amendments or waivers hereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a ".pdf" format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

**IN WITNESS WHEREOF.** Buyer and the undersigned Shareholders of BBI each has executed or causes Agreement to be duly executed as the day and year first above written.

_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name

*[Signature Page to Support Agreement]*

**IN WITNESS WHEREOF.** Buyer and the undersigned Shareholders of BBI each has executed or causes Agreement to be duly executed as the day and year first above written.

**FIRST-CITIZENS BANK & TRUST COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*{Signature Page to Support Agreement}*



**EXHIBIT A**

<u>Name of Shareholder</u>	<u>Sole Voting Shares</u>	<u>Shared Voting Shares</u>	<u>Fiduciary Shares</u>
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## APPENDIX B

### AGREEMENT AND PLAN OF MERGER (Subsidiary Plan of Merger)

**THIS AGREEMENT AND PLAN OF MERGER** (this "Plan of Merger") is made and entered into as of the \_\_\_\_\_ day of November, 2018, by and between **BISCAYNE BANCSHARES, INC.**, a Florida corporation ("BBI"), and **FIRST-CITIZENS BANK & TRUST COMPANY**, a North Carolina banking corporation ("FCB").

**WHEREAS**, FCB, FC Merger Subsidiary V, Inc. ("Merger Sub"), BBI, and BBI's wholly-owned subsidiary bank, Biscayne Bank ("Biscayne"), are parties to that certain Agreement and Plan of Merger dated as of November \_\_\_\_\_, 2018 (the "Merger Agreement"), pursuant to which it is contemplated that Merger Sub, a subsidiary of FCB formed for the purpose of facilitating the transactions described in the Merger Agreement, will merge with and into BBI (the "First Merger"), with the result that, upon consummation of the First Merger, BBI will become the direct wholly-owned subsidiary of FCB; and

**WHEREAS**, FCB desires that, following the effective time of the First Merger, BBI and Biscayne will be combined with FCB, with FCB as the surviving entity, in one or more transactions effected pursuant to and in accordance with the terms of one or more agreements to be entered into between them and FCB; and

**WHEREAS**, as part of the combination of BBI and Biscayne with FCB, BBI and FCB desire to provide for the merger of BBI with and into FCB, subsequent to the First Merger, on the terms and conditions of this Plan of Merger.

**NOW, THEREFORE**, in consideration of the foregoing and the provisions set forth below, BBI and FCB agree as follows:

1. Subject to Section 2 hereof, BBI shall merge with and into FCB pursuant to Sections 607.1104 and 607.1107 of the Florida Business Corporation Act (the "FBCA"), and Sections 55-11-04 and 53C-7-201 of the North Carolina General Statutes (the "NCGS") (the "Subsidiary Merger").

2. The Subsidiary Merger is subject to and conditioned upon:

(a) the parties obtaining all regulatory and other approvals required to effect the First Merger and the Subsidiary Merger; and

(b) the consummation and effectiveness of the First Merger.

Upon any termination of the Merger Agreement, the Subsidiary Merger shall be deemed abandoned and this Plan of Merger shall terminate and be of no further force or effect.

3. The Subsidiary Merger shall have the effects set forth in Section 607.1106 of the FBCA and Section 55-11-06 of the NCGS. At the time the Subsidiary Merger becomes effective (the "Effective Time"), the separate corporate existence of BBI shall cease, and FCB shall be the surviving corporation in the Subsidiary Merger and shall continue to exist under its Articles of Incorporation and Bylaws and to have the name "First-Citizens Bank & Trust Company." As a result of the Subsidiary Merger, Biscayne shall become the direct wholly-owned subsidiary of FCB.

4. At the Effective Time, the effect of the Subsidiary Merger on the outstanding shares of the corporations participating in the Subsidiary Merger shall be as follows:

(a) **BBI:** Each outstanding share of BBI's capital stock (all of which will be held by FCB following the First Merger), and all rights associated therewith, shall be cancelled as a result of the Subsidiary Merger, and no consideration shall be issued or paid with respect thereto.

(b) **FCB:** The outstanding shares of FCB's capital stock at the Effective Time shall not be converted, exchanged, or otherwise altered in any manner by the Subsidiary Merger, and each such share shall continue to be an identical outstanding share of FCB's capital stock immediately following the Effective Time.

5. The Articles of Incorporation and Bylaws of FCB will not be amended under this Plan of Merger and shall continue to be the Articles of Incorporation and Bylaws of FCB as the surviving corporation in the Subsidiary Merger, and the officers and directors of FCB at the time of the Subsidiary Merger shall serve as the officers and directors of FCB as the surviving corporation.

6. The closing of the Subsidiary Merger (the "Closing") shall take place at the offices of FCB in Raleigh, North Carolina, or at such other place as FCB shall designate, on a date specified by FCB (the "Closing Date"), after satisfaction of all conditions precedent to the Subsidiary Merger that have not been effectively waived. At the Closing, FCB and BBI each shall take such actions as are required in this Plan of Merger and as otherwise shall be required by law to consummate the Subsidiary Merger and cause it to become effective.

Subject to the terms and conditions set forth in this Plan of Merger, the Effective Time of the Subsidiary Merger shall be the date and time when Articles of Merger are filed with the North Carolina Commissioner of Banks and the North Carolina Secretary of State, and with the Florida Department of State, or at such later time as shall be set forth in such Articles of Merger; *provided, however*, that in no event shall the Subsidiary Merger become effective prior to the consummation and effectiveness of the First Merger.

7. This Plan of Merger shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflicts of law principles, except that (a) the Subsidiary Merger also shall be governed by applicable laws of the State of Florida, and (b) matters relating to the fiduciary duties of BBI's Board of Directors and similar or related internal affairs matters shall be subject to applicable laws of the State of Florida.

8. This Plan of Merger may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Plan of Merger and any signed agreement or instrument entered into in connection with this Plan of Merger, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a ".pdf" format data file, shall be treated in all manners and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, BBI and FCB each has caused this Agreement and Plan of Merger to be executed in its name by its duly authorized officer in each case as of the date first above written.

**FIRST-CITIZENS BANK & TRUST COMPANY**

By: \_\_\_\_\_  
Craig L. Nix  
Chief Financial Officer

**IN WITNESS WHEREOF**, BBI and FCB each has caused this Agreement and Plan of Merger to be executed in its name by its duly authorized officer in each case as of the date first above written.

**BISCAYNE BANCSHARES, INC.**

By: \_\_\_\_\_  
Thomas D. Lumpkin, II  
Chairman of the Board

**AGREEMENT AND PLAN OF MERGER**  
**(Bank Plan of Merger)**

**THIS AGREEMENT AND PLAN OF MERGER** (this "Plan of Merger") is made and entered into as of the \_\_\_\_\_ day of November, 2018, by and between **BISCAYNE BANK**, a Florida banking corporation ("Biscayne"), and **FIRST-CITIZENS BANK & TRUST COMPANY**, a North Carolina banking corporation ("FCB").

**WHEREAS**, FCB, FC Merger Subsidiary V, Inc. ("Merger Sub"), Biscayne's parent holding company, Biscayne Bancshares, Inc. ("BBI"), and Biscayne, are parties to that certain Agreement and Plan of Merger dated as of November \_\_\_\_\_, 2018 (the "Merger Agreement"), pursuant to which it is contemplated that Merger Sub, a subsidiary of FCB formed for the purpose of facilitating the transactions described in the Merger Agreement, will merge with and into BBI (the "First Merger"), with the result that, upon consummation of the First Merger, BBI will become the direct wholly-owned subsidiary of FCB; and

**WHEREAS**, FCB desires that, following the effective time of the First Merger, BBI and Biscayne will be combined with FCB, with FCB as the surviving entity, in one or more transactions effected pursuant to and in accordance with the terms of one or more agreements to be entered into between them and FCB; and

**WHEREAS**, as part of the combination of BBI and Biscayne with FCB, and pursuant to a separate plan of merger of even date herewith, following the First Merger, BBI will merge with and into FCB (the "Subsidiary Merger"), with the result that Biscayne will become a direct wholly-owned subsidiary of FCB; and

**WHEREAS**, FCB and Biscayne desire to provide for the merger of Biscayne with and into FCB, subsequent to the First Merger and the Subsidiary Merger, on the terms and conditions of this Plan of Merger.

**NOW, THEREFORE**, in consideration of the foregoing and the provisions set forth below, Biscayne and FCB agree as follows:

1. Subject to Section 2 hereof, Biscayne shall merge with and into FCB pursuant to Sections 607.1104 and 607.1107 and 607.1107 of the Florida Business Corporation Act (the "FBCA"), and Sections 55-11-04 and 53C-7-201 of the North Carolina General Statutes (the "NCGS") (the "Bank Merger").

2. The Bank Merger is subject to and conditioned upon:

(a) the parties obtaining all regulatory and other approvals required to effect the First Merger, the Subsidiary Merger, and the Bank Merger, and

(b) the consummation and effectiveness of the First Merger and the Subsidiary Merger.

Upon any termination of the Merger Agreement, the Bank Merger shall be deemed abandoned and this Plan of Merger shall terminate and be of no further force or effect.

3. The Bank Merger shall have the effects set forth in Section 607.1106 of the FBLA and Section 55-11-06 of the NCGS. At the time the Bank Merger becomes effective (the "Effective Time"), the separate corporate existence of Biscayne shall cease, and FCB shall be the surviving corporation in the Bank Merger and shall continue to exist under its Articles of Incorporation and Bylaws and to have the name "First-Citizens Bank & Trust Company."

4. At the Effective Time, the effect of the Bank Merger on the outstanding shares of the corporations participating in the Bank Merger shall be as follows:

(a) **Biscayne:** Each outstanding share of Biscayne's capital stock (all of which will be held by FCB following the First Merger and the Subsidiary Merger), and all rights associated therewith, shall be cancelled as a result of the Bank Merger and no consideration shall be issued or paid with respect thereto.

(b) **FCB:** The outstanding shares of FCB's capital stock at the Effective Time shall not be converted, exchanged, or otherwise altered in any manner by the Bank Merger, and each such share shall continue to be an identical outstanding share of FCB's capital stock immediately following the Effective Time.

5. The Articles of Incorporation and Bylaws of FCB will not be amended under this Plan of Merger and shall continue to be the Articles of Incorporation and Bylaws of FCB as the surviving corporation in the Bank Merger, and the officers and directors of FCB at the time of the Bank Merger shall serve as the officers and directors of FCB as the surviving corporation.

6. The closing of the Bank Merger (the "Closing") shall take place at the offices of FCB in Raleigh, North Carolina, or at such other place as FCB shall designate, on a date specified by FCB (the "Closing Date"), after satisfaction of all conditions precedent to the Bank Merger that have not been effectively waived. At the Closing, FCB and Biscayne each shall take such actions as are required in this Plan of Merger and as otherwise shall be required by law to consummate the Bank Merger and cause it to become effective.

Subject to the terms and conditions set forth in this Plan of Merger, the Effective Time of the Bank Merger shall be the date and time when Articles of Merger are filed with the North Carolina Commissioner of Banks and the North Carolina Secretary of State, and with the Florida Department of State, or at such later time as shall be set forth in such Articles of Merger; *provided, however*, that in no event shall the Bank Merger become effective prior to consummation and the effectiveness of the First Merger and the Subsidiary Merger.

7. This Plan of Merger shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflicts of law principles, except that (a) the Bank Merger also shall be governed by applicable laws of the State of Florida, and (b) matters relating to the fiduciary duties of Biscayne's Board of Directors and similar or related internal affairs matters shall be subject to applicable laws of the State of Florida.

8. This Plan of Merger may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Plan of Merger and any signed agreement or instrument entered into in connection with this Plan of Merger, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a ".pdf" format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, Biscayne and FCB each has caused this Agreement and Plan of Merger to be executed in its name by its duly authorized officer in each case as of the date first above written.

**FIRST-CITIZENS BANK & TRUST COMPANY**

By: \_\_\_\_\_  
Craig L. Nix  
Chief Financial Officer



**IN WITNESS WHEREOF**, Biscayne and FCB each has caused this Agreement and Plan of Merger to be executed in its name by its duly authorized officer in each case as of the date first above written.

**BISCAYNE BANK**

By: \_\_\_\_\_  
Thomas D. Lumpkin, II  
Chairman of the Board